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

Complaint Case No. 69 of 2010
ID No: 02401R0151072005

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

VERSUS

1. **Burman Plantation Ltd,**
a company incorporated under the Companies Act, 1956
through its directors, having its Regd. Office at:
Burman House, Goverdhan Road, Mathura, (U.P).
(***Proceedings abated vide order dated 22.02.2013***)
.....Accused No. 1

2. **Sh. Sanjay Burman,**
Director of accused no.1
R/o House No. 923, Prayag Ghat,
Mathura, (U.P)
(Proclaimed offender vide order dated 26.07.2007)
.....Accused No.2

3. **Sh.** Ravi Arora,
Director of accused no.1
R/o House No. 119, Namak Mandi,
Agra, (U.P).
.....Accused No.3

4. **Ms. U.C. Burman,**
Director of accused no.1
R/o House No. 922, Prayag Ghat,
Mathura, (U.P)
(Proceedings abated vide order dated 15.12.2006)
.....Accused No.4

5. **Ms. Uma Charan Burman,**
Promoter of accused no.1
R/o House No. 922, Prayag Ghat,
Mathura, (U.P)
(Proceedings abated vide order dated 15.12.2006)
.....Accused No.5

6. **Sh. Ramesh Chand,**
Promoter of accused no.1
R/o House No. 94B, Shetia Shakti,
Mathura, (U.P)
(Proclaimed offender vide order dated 11.03.2010)
.....Accused No.6

7. **Sh. Anand Ballabh Agarwal,**
Promoter of accused no.1
R/o House No. 1623, Mandi Ramdas,
Mathura, (U.P)
.....Accused No.7

8. **Sh. Mahesh Chandra Agarwal,**
Promoter of accused no.1
R/o House No. 264, Radhika Vihar,
Mathura, (U.P)
.....Accused No.8

Date of Institution	:	26.02.2005
Date of Committal to Sessions Court	:	05.03.2005
Date of judgment reserved on	:	23.07.2013
Date of pronouncement of judgment	:	29.07.2013

Present : **Sh. Sanjay Mann, Advocate, counsel for SEBI**
Sh. Rana Ranjit Singh, Advocate, counsel for accused no. 3
Sh. K. S. Singh, Advocate, counsel for accused no. 7 and 8

JUDGMENT:

1. **This** criminal complaint was preferred by the Securities & Exchange Board of India (hereinafter referred to as "SEBI" or "the complainant"), on February 26, 2005 in the Court of Additional Chief Metropolitan Magistrate (ACMM), alleging violation of the provisions of Section 12 (1B) of Securities & Exchange Board of India Act, 1992 (hereinafter, "the SEBI Act") and Regulation Nos. 5(1) read with 68(1), 68(2), 73 and 74 of the Securities & Exchange Board of India (Collective Investment Schemes) Regulations, 1999 (hereinafter referred to as "the CIS Regulations" or "the said Regulations"), constituting offence punishable under Section 24(1) read with Section 27 of the SEBI Act.

2. **Eight** persons were arrayed as accused in the criminal complaint preferred under Section 200 Cr.P.C., they being M/s Burman Plantation Ltd., (hereinafter, "A1" or "the Company Accused"), accused No. 2 Sh. Sanjay Burman, ("A2"), accused No.3 Sh. Ravi Arora ("A3"), accused No.4 Sh. U.C. Burman, ("A4"), accused No.5 Ms. Uma Charan Burman ("A5"), accused No.6 Sh. Ramesh Chand ("A6"), accused No.7 Sh. Anand Ballabh Agarwal, ("A7") and accused No.8 Sh. Mahesh Chandra Agarwal, ("A8"). It is alleged that A2 to A8 were Directors/promoters 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 provisions contained in Section 27 of the SEBI Act.

3. **It** is alleged that A1 had floated the Collective Investment Schemes (CIS) and raised amount approximately ₹ 9.50 lacs 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 December 18, 1997, the accused persons had failed to get the Collective Investment Scheme registered with SEBI or to wind up the said scheme or repay the amount

collected from the investors in terms of the CIS Regulations, thus constituting violation of the law and regulations framed thereunder and thereby committing the offence alleged as above.

4. **Cognizance** on the complaint was taken by the learned ACMM vide order dated February 26, 2005 whereby process were issued under Section 204 Cr.P.C. against all the accused persons.

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

6. **Vide** order dated December 15, 2006, it was clarified that A4 & A5 are the same persons and proceedings against A4 and A5 had been been abated on account of her death. Vide order dated July 26, 2007, A2 was declared proclaimed offender on account of his non-appearance. Vide order dated March 11, 2010, A6 was also declared proclaimed offender on account of his non-appearance. Vide order dated February 22, 2013, proceedings qua company accused (A1) had been abated on account of its dissolution in view of order dated January 13, 2012, passed by Hon`ble High Court of Allahabad. Thereafter, vide order dated March 12, 2012, a notice for the offence punishable under Section 24 read with section 27 of the SEBI Act was served upon the A1(company) & A3, A7 & A8 wherein A3, A7 & A8 pleaded not guilty and claimed trial. None had represented the company accused.

7. **To** bring home the guilt of accused, complainant has examined only one witness *i.e.* Ms. Pooja Mirchandani, Asstt. General Manager, SEBI as CW1. Thereafter, A3, A7 & A8 were examined under Section 313 Cr.P.C. A7 & A8 took the plea that they were not associated in any capacity with any company and they had never been a director or promoter of the company accused. However, they refused to lead any evidence in their defence. A3 took the plea that he was not aware about the inclusion of his name as director in MOA and AOA of the company accused and submitted that first time in the month of January, 1999 Sh. Sanjay Burman, Director of company accused informed him that his name had been shown as director to comply with the formalities. He submitted that after knowing this, he immediately resigned from the directorship on January 27, 1999 by sending a registered letter; one copy of same was also forwarded to Registrar of Companies, Mall Road, Kanpur through registered post dated February 16, 1999 requesting to delete his name from formal directorship of the company accused. He further submitted that thereafter, he came to know through newspaper/Amar Ujala dated March 14, 2003 that company accused was already under liquidation before the High Court of Judicature at Allahabad, thereafter, he got the certified copy of order dated March 6, 2003 from the High Court in Company Petition No. 4/2002 titled as Ashok Kumar Agro Seeds & Company, Belanganj, Agra. He also submitted that he had received a certified copy of Form-32 from ROC Kanpur showing that his name as director had been deleted *w.e.f.* April 14, 2000. He further submitted that the documents of MOA and AOA filed by SEBI do not bear his signature before his name and he stated that he had never signed any document of the company accused filed by the SEBI before the Court. To prove his innocence, A3 examined himself as DW1.

8. **Learned** counsel appearing for A7 and A8 contended that there is no iota of evidence against them to show that they were holding

any position in the company accused. Even learned counsel for the SEBI fairly conceded that there is no evidence against A7 & A8 on record.

9. **Learned** counsel appearing for A3 submitted that A3 was not the director in the company accused and when he came to know that his name was misused by the company accused by mentioning his name as Director in Memorandum of Association and Articles of Association of company accused, he immediately submitted his resignation on January 27, 1999. It was submitted that the signature of A3 appearing on the MOA and AOA of company accused is totally different from the signature of A3 appearing on his vakalatnama, which established that someone has forged his signature with malafide intention. It was submitted that since A3 was not the director, he cannot be held liable for the violations committed by company accused. Alternately, it was contended that even there is no evidence on record to show that A3 was in-charge of, and responsible to, the company accused for its day to day affairs, thus, A3 cannot be held liable for the violations committed by company accused. It was further contended that since A3 had resigned from the company accused *w.e.f* January 27, 1999, he cannot be held liable for the violations committed by the company accused thereafter. At last it was contended that the present criminal complaint is not maintainable as it is barred by period of limitation.

10. **Per** contra, learned counsel appearing for SEBI contended that by submitting his resignation letter, A3 admitted himself that he was one of the directors in the company accused and he in his resignation letter nowhere mentioned that his name had been misused by anyone without his consent or knowledge. It was further contended that besides the fact that his name was mentioned in the MOA and AOA of the

company accused, his name was also mentioned in the brochure of Collective Investment Schemes launched by the company accused highlighting that he was one of the directors of the company accused. It was submitted that since he was one of the directors at the time of mobilizing funds, he is also liable for the violations committed by the company accused. It was further submitted that since the violations committed by the company accused were continuing in nature, the present complaint is well within the period of limitation and he relied upon the judgment ***Samparan Agro & Livestock Ltd. & Ors. v/s. SEBI, Crl. M.C.969/2010 decided by Delhi High Court on October 25, 2010***.

11. I have heard rival submissions advanced by counsel for both the parties, perused the record carefully and gave my thoughtful considerations to their contentions.

12. **Before** dealing with the contentions raised by counsel for the parties, I prefer to examine as to whether there was any violation on the part of company accused at the time of mobilizing funds or not because to impose vicarious liability upon the accused persons, firstly it has to be ascertained as to whether company accused had violated any provisions of SEBI Act at the time of mobilizing fund.

13. **Indisputably,** the company accused was incorporated on August 1, 1997. Moreover, this fact is also proved from the Memorandum of Association of the company accused, which is part of Ex.CW1/8. Section 12(1B) was inserted in the SEBI Act by way of amendment Act 9 of 1995 *w.e.f* January 25, 1995. Section 12 (1B) reads as under:-

> Section 12*(1B): "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 sub-section (2) of section 30."

(emphasis supplied)

14. **The** effect of insertion of Section 12(1B) in the Act is that *w.e.f* January 25, 1995, no person was supposed to sponsor or caused to be sponsored or carry on or caused to be carried on any collective investment scheme unless he obtained a certificate of registration from the Board in accordance with the regulations. Since, company accused was incorporated only in the year 1997, it means that company accused was not supposed to either launch any collective investment scheme or mobilize any fund through collective investment scheme unless it obtained a certificate of registration from the Board in accordance with regulations. Admittedly, company accused had not obtained any such certificate before mobilizing funds. No doubt, under proviso to Section 12(1B), some relaxation has been provided to certain companies to continue with the existing schemes without obtaining the certificate of registration. But said relaxation is applicable only to those companies which were running collective investment schemes prior to the insertion of Section 12(1B) in the Act *i.e.* prior to January 25, 1995 and no certificate was required to run such schemes. Only such companies were permitted to continue with the schemes till the notification of Regulations. Admittedly, the company accused was not operating any scheme on or before January 25, 1995, thus company accused was not entitled to claim any relaxation as provided under proviso to Section 12(1B) of the Act.

15. **Now** one can say that since there was no regulation in the year 1997, company accused was not in a position to obtain the certificate of registration. This issue was dealt with by Allahabad High Court in case ***Paramount Bio-Tech Industries Limited Versus Union of India reported in 2003 INDLAW All 168***, wherein it was held:

> *"It is true that there were no Regulation up to 1999 and, hence, certificate could not be granted under Section 12 (1B). However, the proviso to Section 12 (1B) permitted only those persons who were carrying on the business of collective investment schemes prior to the 1995 amendment (which came into force with effect from 25 January, 1995) to continue to operate till Regulations were framed. Petitioner No. 1 was incorporated in 1996 (vide paragraph 7 to the writ petition) and, hence, it was obviously not carrying on the said business before 25 January 1995. Hence, it could not get the benefit of the proviso to Section 12 (1B). It follows that the business of collective investment scheme, which it was doing was wholly illegal. The letter of the SEBI to the petitioner dated 27 February, 1998 (vide Annexure 4 to the writ petition) was thus indulgent to the petitioner. In fact, by that letter, the SEBI took a lenient view by permitting the petitioner to operate after getting rating from a credit agency. In fact, even this concession could not have been granted by the SEBI, as the proviso to section 12 (1B) does not apply to the petitioner, for the reason given above. The SEBI should in fact have totally prohibited the petitioner from doing the business of collective investment scheme and should have directed prosecution of the petitioner and its officials under Section 24 read with Section 27 of the SEBI Act".*

16. **From** the above judgment, it becomes crystal clear that mere fact that there was no regulation during the period 1997-1998 was not a valid excuse to the company accused to mobilize funds in violation of mandatory provisions of Section 12(1B) of the Act.

17. **Now** coming to the issue as to whether company accused had mobilized any fund or not. Company accused vide its letter dated December 17, 1997 (Ex. CW1/7) intimated the SEBI that company

accused had collected funds to the tune of ₹ 9.54 lac from general public through various collective investment schemes. Company accused vide its subsequent letter dated June 26, 1998 intimated the SEBI that company accused had received the deposits worth of ₹ 21.74 lac and from the said amount, company accused had repaid the amount of ₹ 4.11 lac to the investors through its branches, thus in nut shell, company accused had received a deposit to the tune of ₹ 17.63 lac from the investors, which company accused had spent on various assets. As per said letter, total liability of the company accused stands to the tune of ₹ 24,26,507/- including interest. Since, company accused had mobilized the said amount without obtaining the mandatory certificate of registration, company accused had violated Section 12(1B) of the SEBI Act.

18. **Indisputably,** the CIS Regulations were notified *w.e.f* October 15, 1999. As per Regulation 5, the companies, which were operating collective investment schemes prior to the notification of CIS Regulations were supposed to move an application to the Board for grant of a certificate of registration within a period of two months. Admittedly, company accused failed to move any such application within the prescribed period, thus company accused had also violated Regulation 5 of CIS Regulations. Once, a company failed to move the application in terms of Regulation 5 of CIS Regulations or if application was made but same was rejected, such companies were bound to refund the amount to the investors and further bound to submit the winding up and repayment report to the SEBI on the prescribed format in terms of Regulation 73 of CIS Regulations. But neither company accused refunded the amount to the investors nor submitted the winding up and repayment report to the SEBI on the prescribed format. Thus, company accused had also violated Regulations 5 & 73 of CIS Regulations, which is punishable under Section 24(1) of the SEBI Act.

19. **Now** coming to the contentions relating to the role of A3, A7 & A8.

20. **First** question emerges as to whether A3 was one of the directors in the company accused or not?

21. **Vide** its letter dated May 4, 1998 (Ex. CW1/8), company accused had furnished certain informations about the company accused including the names of its directors. As per the information furnished by company accused Ravi Arora (A3) was one of the directors. In MOA, the name of A3 is also mentioned as one of the subscribers. His name is also mentioned in the Articles of Association of the company accused as one of the first directors. Company accused had also sent a brochure of the collective investment scheme and even in the said brochure, the name of A3 is mentioned as one of the directors. In Form-32, part of Ex. CW1/27, it is mentioned that he ceased to be director *w.e.f* April 14, 2000. Thus, from the said documents, it becomes abundantly clear that he was one of the directors of the company accused .

22. **During** his statement recorded under Section 313 Cr.P.C, A3 Ravi Arora took the plea that he was not aware that his name had been shown as director in the company accused and when he came to know, he immediately submitted his resignation on January 27, 1999. He also filed the copy of said resignation letter, which is part of Ex. CW1/27. Perusal of resignation letter reveals that he had resigned from the company accused due to some personal reasons. In his resignation letter, he did not allege that the company accused had shown him as director without his consent or knowledge or that company accused had misused his name in any manner. Rather, he categorically stated that due to some personal difficulties, he was unable to continue the

responsibility of directorship, thus he submitted his resignation on account of personal difficulties and not on account of any fraud played by the company accused with him. Thus, even this resignation letter proves that he was one of the directors of the company accused. Hence, the contention of learned defence counsel that someone had misused the name of A3 by forging his signature on the MOA and AOA is not relevant to determine as to whether A3 was one of the directors in the company accused or not. Admittedly, A-3 had not taken any action either against the company accused or against the person (s) who allegedly misused his name, which further falsifies the defence version. Had his name been used without his consent or knowledge, he would have certainly taken legal action against company and such person.

23. **Now** coming to the next contention raised by the counsel for A3 that since A3 had resigned *w.e.f* January 27, 1999, he cannot be held liable for the violations committed by company accused as the Regulations were notified *w.e.f.*. October 15, 1999.

24. **No** doubt, from the Form-32 and resignation letter, it is established that A3 had resigned from the company accused. Though in his resignation letter, he submitted that he had resigned *w.e.f* January 27, 1999 whereas in Form-32, it is mentioned that he ceased to be director *w.e.f* April 14, 2000. But the fact remains that he had resigned from the company accused. Since, he had resigned from the company accused, he cannot be held liable for the violations committed by company accused after his resigntion. But in the instant case, the violations were committed by the company accused much prior to his resignation as from the letters of company accused, it is established that funds were generated during the period 1997-1998. Since, the funds were generated in violation of mandatory provisions of Section 12(1B) of the Act during the tenure of A-3, he is liable for the said violations. Thus, he cannot

escape from his liability by simply tendering his resignation subsequently. If such type of plea is accepted in the Court of law then interst of gullible and unwary investors will be affected adversely. Moreover, in such circumstances, a cunning mind would escape from his liability after collecting huge money from unwary investors by just tendering his resignation. Thus, to impose the vicarious liability, true test is as to whether A-3 was director in the company accused at the relevant time when the company accused raised funds in violations of mandatory provisions of SEBI Act or not. If he was one of the directors, he shall be liable for it irrespective of the fact that he had resigned subsequently. Since, A3 was director and activitively participated at the time of launching CIS and raising funds, I am of the opinion that his subsequent resignation is not helpful to him to escape him from his liability.

26. **As** already discussed that company accused had raised fund from general public through lunching various collective investment schemes. As per the clause 69 of the Articles of Association of company accused. only Board of Directors was empowered to borrow or raise money on behalf of company accused by passing resolution in the Board of Meetings. It means that company accused could raise funds through collective investment schemes only when the decision was taken in the meeting of Board of directors. Being the director, A-3 was one of the members of Board of directors in the company accused. It means that he was one of the members of the Board, who took the decision to launch collective investment schemes and to collect funds through such collect investment schemes. This fact is further established from the brochure of the collective investment schemes wherein the name of A3 is highlighted as director as well as promoter stating that he had extensive experience in business and industrial activities. Thus, when the company accused launched collective investment schemes and induced the public at large to invest in their schemes, company accused represented to its investors

that A3 was of the directors as well as promoter of the company accused and he has extensive experience in business and industrial activities. Similarly, company accused in its letter Ex. CW1/8 disclosed to the SEBI that A3 Ravi Arora is a director and he is an industrialist. Thus, it further establishes that Mr. Ravi Arora is director by virtue of his experience and his entrepreneurship. Hence, it is established beyond doubt that A3 was one of the directors who was not only a party to the Board of Directors who was responsible to take decision to lunch collective investment schemes and to collect funds through collective investment schemes but also he was one of the directors who had induced public at large to invest the money in the schemes launched by the company accused by permitting his name to be highlighted in the brochure of the scheme.

27. **Once,** it is established that A3 was involved in lunching the Collective investment and raising the funds, he becomes liable for the violations committed by the company accused. In these circumstances, the contention raised by learned counsel that since A-3 was not in-charge of, and responsible to, the company accused for the conduct of its day to day affairs, thus he cannot be held liable for the violations committed by the company lost its insignificant. Though in support of his contention, learned counsel cited numerous judgements, but to my mind, the said judgements are not relevant in the facts and circumstances of the case in hand, thus I am not inclined to refer to the same. However, in this regard, the observations made by the Apex Court in ***K.K. Ahuja v/s. V. K. Vora and Another, 2009 (3) JCC (NI) 194*** are relevant and same are produced as under:-

> *(i) If the accused is the Managing Director or a Joint Managing Director, it is not necessary to make an averment in the complaint that he is in charge of, and is responsible to the company, for the conduct of the*

business of the company. It is sufficient if an averment is made that the accused was the Managing Director or Joint Managing Director at the relevant time. This is because the prefix 'Managing' to the word 'Director' makes it clear that they were in charge of and are responsible to the company, for the conduct of the business of the company.

(ii) In the case of a director or an officer of the company who signed the cheque on behalf of the company, there is no need to make a specific averment that he was in charge of and was responsible to the company, for the conduct of the business of the company or make any specific allegation about consent, connivance or negligence. The very fact that the dishonoured cheque was signed by him on behalf of the company, would give rise to responsibility under Sub-section (2) of Section 141.

(iii) In the case of a Director, Secretary of Manager (as defined in Section 2(24) of the Companies Act) or a person referred to in clause (e) and (f) of Section 5 of Companies Act, an averment in the complaint that he was in charge of, and was responsible to the company, for the conduct of business of company is necessary to bring the case under Section 141(1). No further averment would be necessary in the complaint, though some particulars will be desirable. They can also be made liable under Section 141(2) by making necessary averments relating to consent and connivance or negligence, in the complaint, to bring the matter under that Sub-section.

(iv) Other Officers of a company can not be made liable under Sub-section (1) of Section 141. Other officers of a company can be made liable only under Sub-section (2) of Section 141, by averring in the complaint their position and duties in the company and their role in regard to the issue and dishonour of the cheque, disclosing consent, connivance or negligence."

(emphasis supplied)

28. **It** is evident from the above judgment that if cheque is signed

by the director or an officer of a company, there is no need to make a specific averment that he was in-charge of, and responsible, to the company accused for the conduct of its business. On the same analogy, in the instant case since name of A3 was mentioned in the brochure of the schemes, to my mind there is no requirement to make any specific averment in the complaint. Moreover, in the instant case SEBI had made sufficient averments in Para 19 of the complaint to the effect that A-3 was not only director but promoter of the accused company, thus in-charge of and responsible to the company accused for the conduct of its business and in-charge of its day to day affairs. Besides that it was also averred that A-3 had actively participated in mobilization of funds. In view of the law laid down in the aforesaid judgement, I am of the view that no further averment was required in the complaint.

29. **Since**, A3 was part of Board of Directors who was responsible to take decision to launch CIS, it means that A3 was a consenting party to the said decision, thus under sub-Section 2 to Section 27, onus is shifted upon the accused to establish that he was not the party to the said decision or the same was taken without his consent or knowledge. But he failed to adduce any evidence in this regard. Needless to say that he had not taken any action against the accused person(s) to show that his name was misused by rest of the directors without his consent or knowledge. In these circumstances, I have no hesitation to hold that being director he (A-3) had actively participated in launching the CIS as well as in raising funds.

30. **Perusal** of the record reveals that there is no scintilla of evidence on record to show that A7 & A8 were holding any position in the company accused. Moreover, this fact is also admitted by counsel for the SEBI. Since, A7 & A8 were not holding any position in the company accused, they cannot be held liable for the violations committed by the

company accused.

31. **Now** coming to the contention raised by counsel for A-3 that present complaint is barred by the period of limitation as the present complaint was filed in the year 2005 whereas the violations were committed in the year 1997-1998.

32. **The** issue of limitation was settled by the High Court of Delhi in ***Samparan Agro & Livestock Ltd. & Ors. v/s. SEBI (supra).*** After discussing all the relevant provisions and case law, it was held that the violations of the provisions of Section 12(1B) and Regulations 5 , 73 and 74 are CIS Regulations are continuing in nature. In this regard , para no. 13 is relevant and same is reproduced as under:

> *"**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 investment 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 petitioners, thus, infringement of Regulations 73 and 74 is continuing in nature and limitation envisaged under Section 468 Cr.P.C. would not be attracted".*
>
> *(emphasis supplied)*

33. **In** view of the aforesaid judgment, I do not find any substance in the contention raised by learned defence counsel that the present criminal complaint is not maintainable. being barred by period of limitation.

34. **Pondering** over the ongoing discussion, I am of the considered opinion that SEBI has succeeded to prove beyond the shadow of all reasonable doubts that A3 was one of the directors of the company accused at the relevant time, thus, he is responsible for launching of collective investment schemes and raising funds through CIS, thus he is liable for the violations of Section 12(1B) of SEBI Act committed by company accused, which is punishable under Section 24 (1) of the Act and in view of Section 27(1) & (2) of the SEBI Act, A-3 is also liable for the said violations. **Thus, I hereby hold A3 Ravi Arora guilty for the offence punishable under Section 24 (1) r/w Section 27 of the SEBI Act. However, I am of the considered opinion that complainant has miserably failed to prove the guilt of A7 & A8, thus,** I hereby acquit A7 Anand Ballabh Agarwal & A8 Mahesh Chandra Agarwal from all the charges.

Announced in the open Court
On 29th day of July 2013

(PAWAN KUMAR JAIN)
Additional Sessions Judge-01
Central/Tis Hazari Courts/Delhi

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

Complaint Case No. 69 of 2010
ID No: 02401R0151072005

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

VERSUS

Sh. Ravi Arora,
Director of accused no.1
R/o House No. 119, Namak Mandi,
Agra, (U.P).
.....Convict

Present : Sh. Sanjay Mann, Advocate, counsel for SEBI
Sh. Rana Ranjit Singh, Advocate, counsel for convict

ORDER ON THE POINT OF SENTENCE:

1. **Vide** separate judgment dated July 29, 2013, **A3 Ravi Arora** was held guilty for the offence punishable under Section 24(1) read with Section 27 of the SEBI Act.

2. **Learned** counsel appearing for convict requests to take a

lenient view on the ground that no complaint of any investor is pending either before the SEBI or before any other authority. It is submitted that during the liquidation proceedings, Hon`ble High Court of Allahabad published advertisements in newspapers inviting the claims from the investors and no investor submitted his claim during the liquidation proceedings. It is further submitted that the convict has no criminal antecedent and he is the sole bread earner of the family and if he be sent behind bar, his family members will be affected.

3. **Per** contra, learned counsel appearing for the SEBI submits that during the winding up proceedings before the Hon`ble High Court of Allahabad, counsel appearing for company made a submission that company accused was not in a position to make payment to its debtors (including investors). It is further submitted that no doubt, the advertisement was given in the newspapers in the year 2003 during the winding up proceedings, but the order was passed in the year 2004 wherein counsel made the submission that company was not in a position to make the payment to its debtors. It is submitted that in its letter dated January 29, 2001 (Ex. CW1/25), company accused admitted that the total liability of the company was ₹ 24,26,507/-, but convict failed to produce any document to show that company accused had made the said payment to the investors. It is further submitted that considering the gravity of the offence, legislature has enhanced the punishment from one year to 10 years with a fine to the tune of ₹ 25 crore by way of Amendment which shows that the legislature is not intending to take such type of white collar crimes lightly.

4. I have heard rival submissions advanced by counsel for both the parties, perused the record carefully and gave my thoughtful consideration to their contentions.

5. **By** way of Amendment Act 52 of 2002 *w.e.f* October 29, 2002, the punishment provided under Section 24(1) of SEBI Act had been enhanced to the extent of 10 years or with fine which may extend to ₹ 25 crore or with both. Thus, at the time of determining the sentence, Court has also to keep in mind the intention of the legislature. The said amendment shows that the legislature intends to deal with the offenders of such white collar crime with iron hands.

6. **No** doubt, there is no criminal antecedent against the convict Ravi Arora but it is also true that in such white collar crime, there is hardly any instance where convict has any criminal antecedent, thus it cannot be considered as sufficient mitigating factor. Similarly, though the convict has taken the plea that no complaint of any investor is pending before any authority but it is also true that during the trial no document has been placed on record to show that company accused had refunded the amount to the investors. Since, the company accused had collected the amount, it was the duty of the company accused as well as its directors to place documents on record to show that the company accused had refunded the amount to all the investors. Thus, to my mind, the said plea is also not a sufficient mitigating factor to impose a token sentence.

7. **Indisputably,** in the schemes launched by the company accused unorganised and unwary investors had invested their hard earned money in the hope that they would get exorbitant interest but in the said hope they infact lost their principal amount. In the entire episode, the ultimate sufferer is unorganized investors, thus Court cannot ignore their interest at the time of dealing with such type of offences.

8. **Considering** all the above facts and circumstances, I am of the view that convict deserves some substantial punishment besides fine amount, thus I hereby sentence the convict **Ravi Arora** rigorous

imprisonment for a period of six months and a fine of ₹ 3 lac in default further simple imprisonment for a period of two months for the offence punishable under Section 24(1) of the SEBI Act.

9. **Copy** of judgment along with order on the point of sentence be given to the convict/his counsel free of cost.

10. **File** be consigned to record room with direction that same be revived as and when the proclaimed offenders i.e. accused no. 2 and accused no. 6 be apprehended.

Announced in the open Court
On 1st August, 2013

(PAWAN KUMAR JAIN)
Additional Sessions Judge-01
Central/Tis Hazari Courts/Delhi