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IN THE COURT OF MS. ASHA MENON: ADDL. SESSIONS JUDGE:
DELHI.

CC NO.15/2005

SECURITIES & EXCHANGE BOARD OF INDIA, a statutory body established under the provisions of Securities and Exchange Board of India Act, 1992, having its Head office at Mittal Court, B – Wing, 224, Nariman Point, Mumbai 400 021 represented by its Assistant General Manager, Ms. Jyoti Jindgar.

... Complainant

VS.

1. M/s. Golden Jubilee (Rajasthan),
Agro Plantations Ltd.
Registered Office at
Satya Narayan Complex,
Rly. Station Road,
Bhilwara, Rajasthan.

Also at:
Old Dhan Mandi,
Bhilwara-311001, Rajasthan.
2. Sh. Chandra Prakash Namdharani,
(Director)/Promoter,
Arvind Sadan, A-422, Opp. Church,
Sanjay Colony, Bhilwara-311001.
3. Sh. Pritam Kumar Vyas (Director)/Promoter
C-51, Dr. R.K. Colony,
Bhilwara-311001.
4. Sh. Deepak Vinayak (Director)/ Promoter,
C-51, Dr. R.K. Colony,
Bhilwara-311001.

Also at:
G-51, Dr. Radhakrishnan Colony,
Bhilwara-311001.

Sh. Lalit Kumar Ojha, (Promoter/Director),
88-Extn. Opp. UIT Office,
Subhash Nagar, Bhilwara-311001.





6. Sh. Arvind Kumar, (Promoter/Director)
A-422, Near the Church,
Sanjay Colony, Bhilwara-311001.
7. Sh. Gori Shanker Ojha, (Promoters/Director)
~~Ojha Bhawan, Subhash Nagar,~~
Bhilwara-311001.
8. Sh. Narendra Ojha, (Promoter/Director),
88-Extn. Opp. UIT Office,
Subhash Nagar, Bhilwara-311001.
9. Sh. Mahesh Ojha, (Promoter/Director),
88-Extn. Opp. UIT Office,
Subhash Nagar, Bhilwara-311001.
10. Sh. Bheru Lal, (Promoter/Director),
Vardhaman Colony,
Gate no.4, Bhilwara-311001.

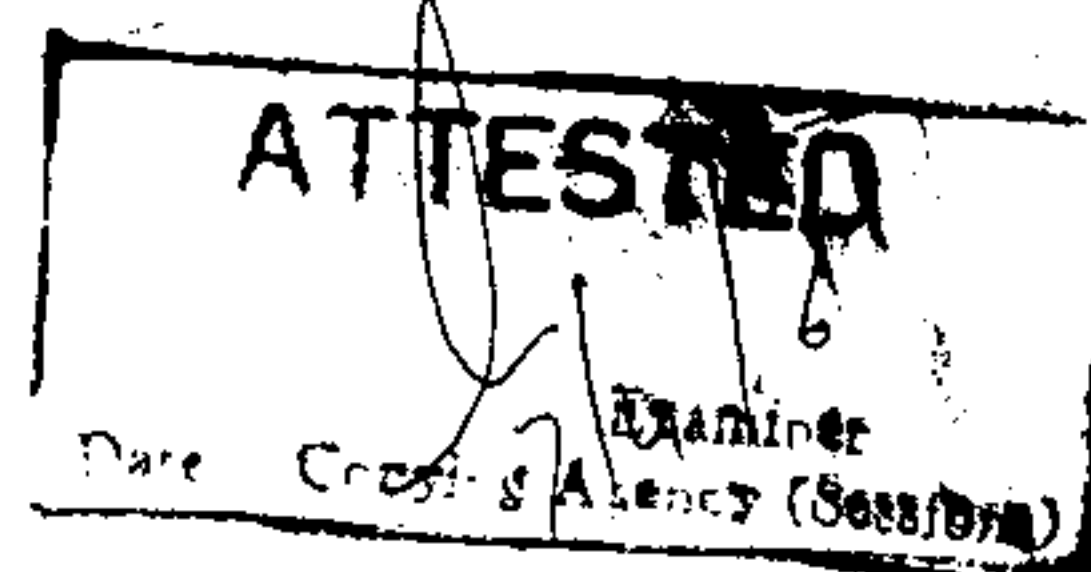
.... Accused

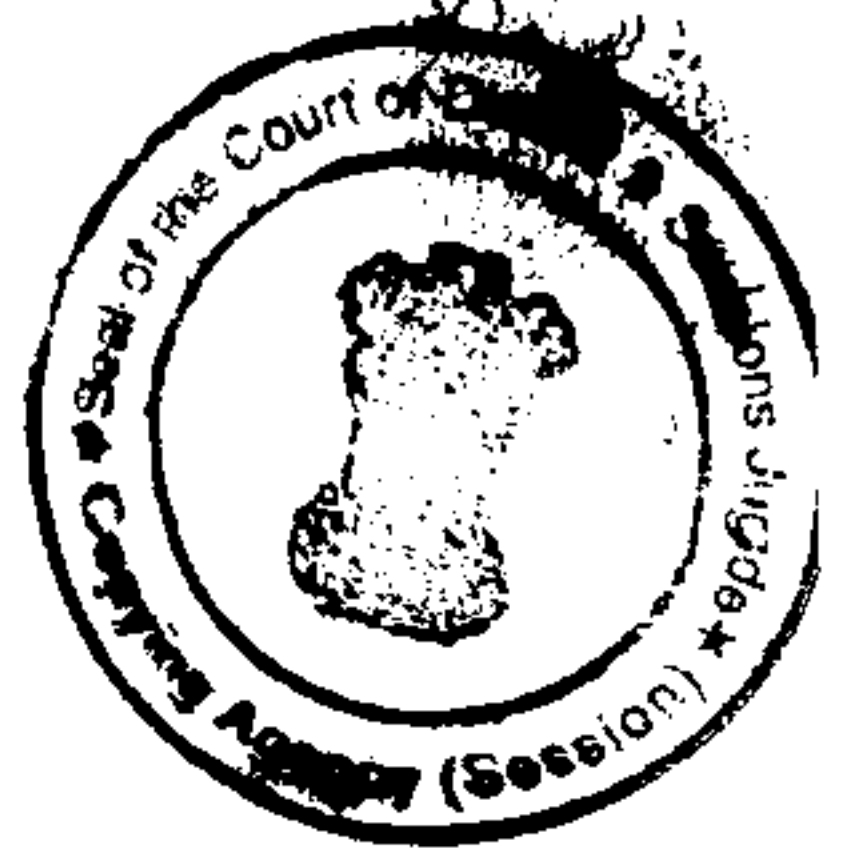
JUDGMENT:

BACKGROUND FACTS:

1. The complaint has been filed by the Securities and Exchange Board of India (hereinafter referred to as the SEBI) through its AGM Ms. Jyoti Jindgar (now DGM), against M/s. Golden Jubilee (Rajasthan) Agro Plantations Ltd. and against its Directors/Promoters Sh. Chandra Prakash Namdharani, Sh. Pritam Kumar Vyas, Sh. Deepak Vinayak, Sh. Lalit Kumar Ojha, Sh. Arvind Kumar, Sh. Gori Shanker Ojha, Sh. Narendra Ojha, Sh. Mahesh Ojha, Sh. Mahesh Ojha and Sh. Bheru Lal.

2. The complaint has been preferred under the Securities and





Exchange Board of India Act, 1992 and the rules made thereunder.

The case as set out in the complaint is that the Government of India

after detailed consultations with the regulatory bodies decided that

an appropriate regulatory frame work for regulating entities which

issued instruments such as Agro Bonds and Plantation Bonds etc.,

was requires to be created. Thereafter, the Government notified

on November 1997, through a press release, that such schemes

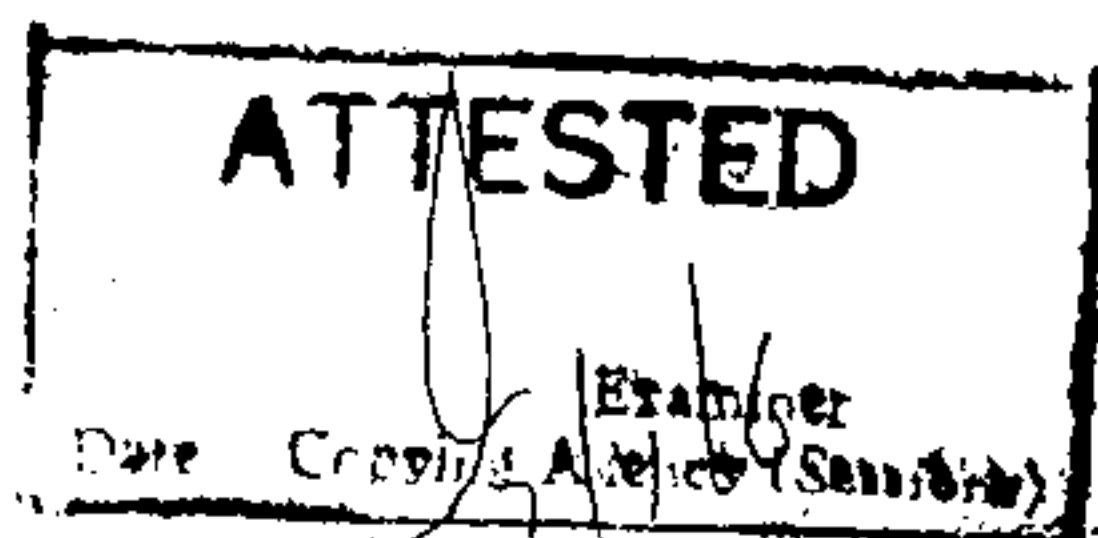
relating to issue of Agro Bonds etc., would be treated as Collective

Investment Scheme governed by the SEBI Act 1992.

3. The aim of these regulations were to ensure investor protection and to promote legitimate investment activities. The regulations were notified in 1999 as the SEBI (Collective Investment Scheme) Regulation 1999.

4. The entities involved in any Collective Investment Scheme were required, vide the press release dated 26.11.97 and 18.12.97 to file information with the SEBI giving the detail of the Company, its Scheme and nature of Investment etc. In response the accused in this case i.e. M/s. Golden Jubilee Agro Plantations Ltd. informed that they had collected Rs.99,770/- from the general public. It also informed who the Directors were.

5. It has been stated in the complaint that after the regulations came into force, the SEBI issued letters dated 15.12.99 and 29.12.99 and also issued public notices dated 10.12.99 informing



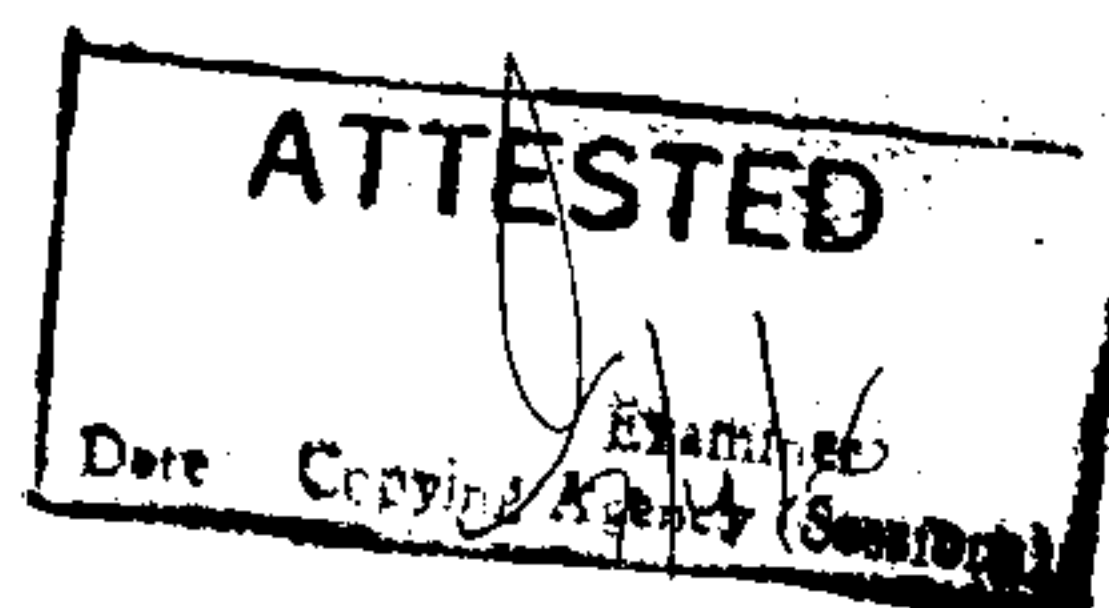


the accused company of the notification and the regulations and directing it to send information memorandum to all investors detailing the state of affairs of the Schemes, the amount repayable to each investors and the manner in which such amount was determined. This information was to be sent by 28.2.2000. Subsequently, the last date for furnishing details was extended upto 31st March, 2000.

ALLEGATIONS IN THE COMPLAINT

6. According to the complainant, the accused No. 1 failed to apply for registration and also failed to submit the repayment report nor did it furnish details for winding up the schemes. Therefore, on December 7th, 2000, orders were issued by SEBI u/s 11 B of the SEBI Act 1992, to the accused company to refund the money collected to the investors within one month and submit the report of repayment and winding up to the SEBI. According to the complainant since there was no compliance of this order, the accused company and its Directors had violated the Regulations No. 68(1) and (2) 73 and 74 R/W Regulation 5 (1) of the SEBI (Collective Investment Scheme) Regulation 1999 and had also violated Section 11 B and 12 (1) B of the SEBI 1992 which were all violation punishable U/s 24 (1) of the SEBI 1992 R/W Section 27 of the said Act.

7. Vide orders dated 15.12.2003 the accused were summoned





for trial. The notice of allegations under Section 251 Cr.P.C was served on accused on 8.7.2005 and they pleaded not guilty. The complainant examined Ms. Jyoti Jindgar, DGM as CW-1 in support of the complaint. The statements of the accused were recorded u/s 313 Cr.P.C. The accused relied only on documents for their defence.

EVIDENCE

8. CW-1 Ms. Jyoti Jindgar has deposed to the Government of India press release dated 18.11.97 directing that bonds which were in the nature of Plantation Bonds and Agro bonds issued by the Companies would be considered as Collective Investment Scheme as stipulated under Section 11 of the SEBI Act, 1992. She deposed that thereafter, the SEBI issued press release dated 26.11.97 and the public notice dated 18.12.97 directing the Companies which were running Collective Investment Scheme (CIS) to file information with SEBI regarding their schemes such as details of fund mobilized, names of Directors/Promoters etc in case they were desirous of obtaining benefits under Section 12(1) (B) of SEBI Act. She deposed that pursuant to this the Company filed information vide letter dated 12.1.98 received by the SEBI on 15.1.98 which is Ext.CW1/1. She deposed that as per this letter, the company had mobilized Rs.31,9750/- under its Collective Investment Scheme and the company also filed details of its promoters and directors and

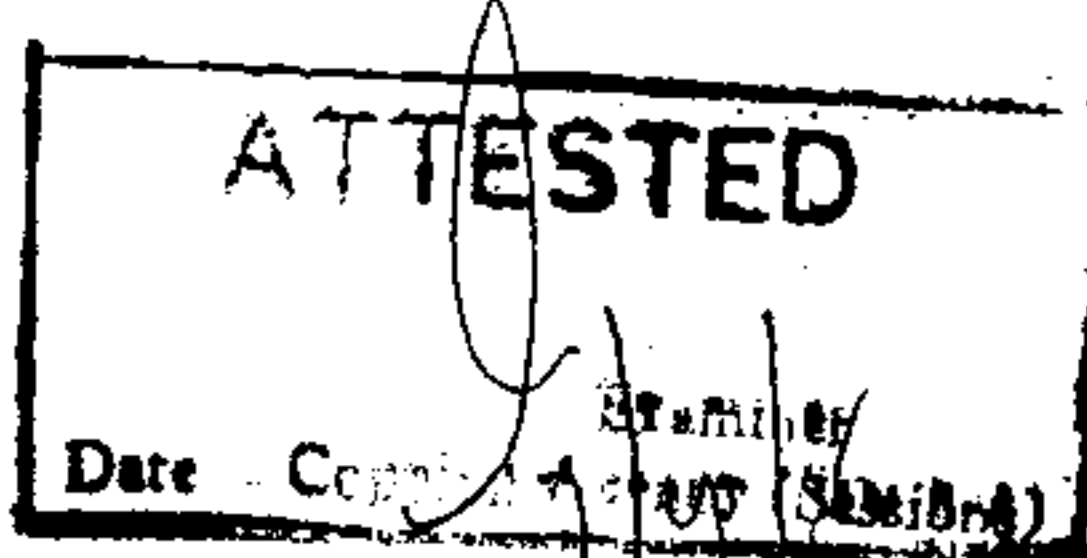
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also the copy of Memorandum and Articles of Association of the Company. The witness also deposed that subsequently the company sent another letter dated 28.7.98 Ex.CW1/2, received on 3.8.98 submitting details of their directors and further informing the SEBI that from 11.10.97 till 31.3.98 the company had mobilized Rs.99,770/- under its CIS.

9. Subsequently, the SEBI (CIS) Regulations, 1999 were notified on 15.10.99. The witness deposed that intimation regarding the notification of regulations had been sent to the Company and it was intimated vide public notice dated 20.10.99 and specific letter dated 21.10.99 were sent by registered post. She deposed that this letter returned undelivered. The witness deposed that in terms of the regulations the Company was required to apply for registration or wind up its scheme in terms of Regulations 73 and 74 and was further required to circulate information memorandum to its Investors and to repay and wind up its scheme and submit the winding up and repayment report with the SEBI within five and half months. The witness deposed that these were communicated to the Company vide letters dated 10.12.99 and 29.12.99 and both these letters were also returned undelivered to the SEBI with the remarks "Prapt Karta Ki Dukan Band Hai". The witness stated that the requirements were also communicated vide public notice dated 10.12.99.





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10. The witness further deposed that as the Company neither applied for registration nor intimated regarding the winding up of its scheme, show cause dated 12.5.2000 was issued which also returned to the SEBI undelivered with remarks "Is Naam Se Koi Nahin Hai". The witness stated that SEBI had forwarded the format of winding up and repayment report in which companies were required to furnish information regarding winding up of the schemes vide letter dated 31.7.2000 which was also returned undelivered to the SEBI. On account of the failure of the company to comply with the regulatory provisions of the regulations, the company was directed by the Chairman, SEBI vide order dated 7.12.2000 to repay the investors as per the original terms of offer within one month of the said order. The witness stated that this order was communicated to the company vide letter dated 18.12.2000 which was returned as undelivered to the SEBI. The witness deposed that the contents of the said order issued by the Chairman, SEBI under Section 11 of the SEBI Act were also published in the leading national newspapers as well as vernacular newspapers on 14.1.2001. The witness deposed that vide this public notice SEBI intimated to all Collective Investment Schemes, the obligations imposed on them under Regulations 73 and 74 in case they were not to apply for registration under regulation. It was also intimated that in case they failed to comply with these requirements, they will

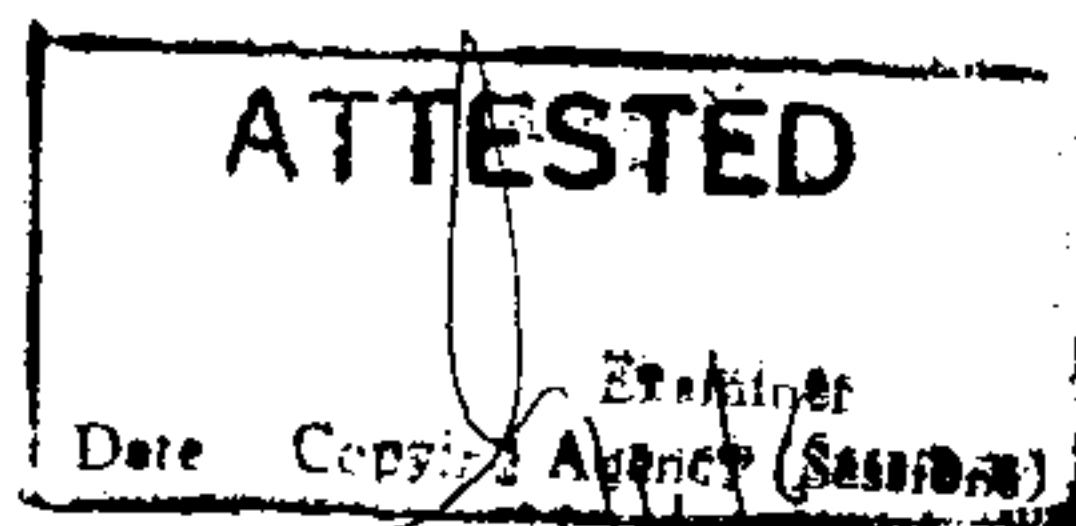
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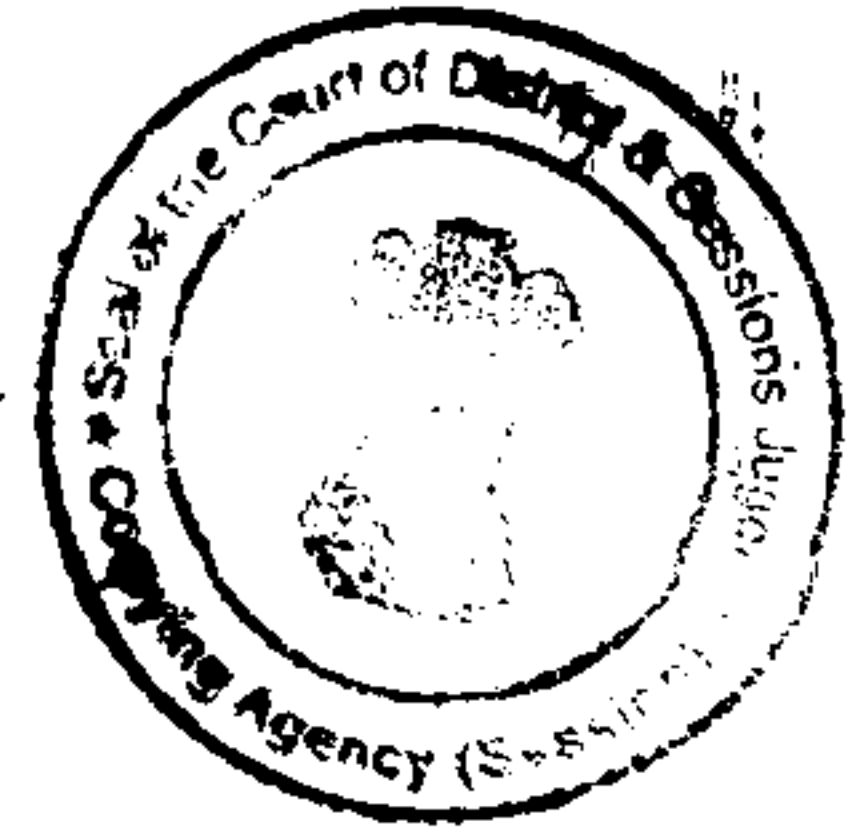
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be liable for further actions including directions for debarment, initiation of prosecution etc. She deposed that the name of the company appeared in the said list at serial no.158. The witness deposed that the company did not file any application seeking registration and even after the order 7.12.2000, the company did not furnish any report with SEBI confirming compliance till the filing of the complaint. The witness brought on record various exhibits including the returned envelopes, letters contained therein and the copy of the publication in the Hindustan Times.

11. The witness in her cross-examination refuted the suggestion that the letters dated 10.12.99 and 29.12.99 had not been served upon the accused while at the same time affirming that these letters had returned undelivered. She further stated that the contents were communicated vide public notice dated 10.12.99 which was published in vernacular and national dailies. She admitted that she had not brought the publication in vernacular and had only brought the publication effected in Hindustan Times on 19.12.99. She further deposed that the letters were sent to the addresses furnished by the company and no further steps to serve the company were separately made. She affirmed that letter dated 12.5.2000 sent to the company had returned undelivered as did the order dated 7.12.2000 forwarded to the company vide letter dated 18.12.2000. However, she asserted that the contents were



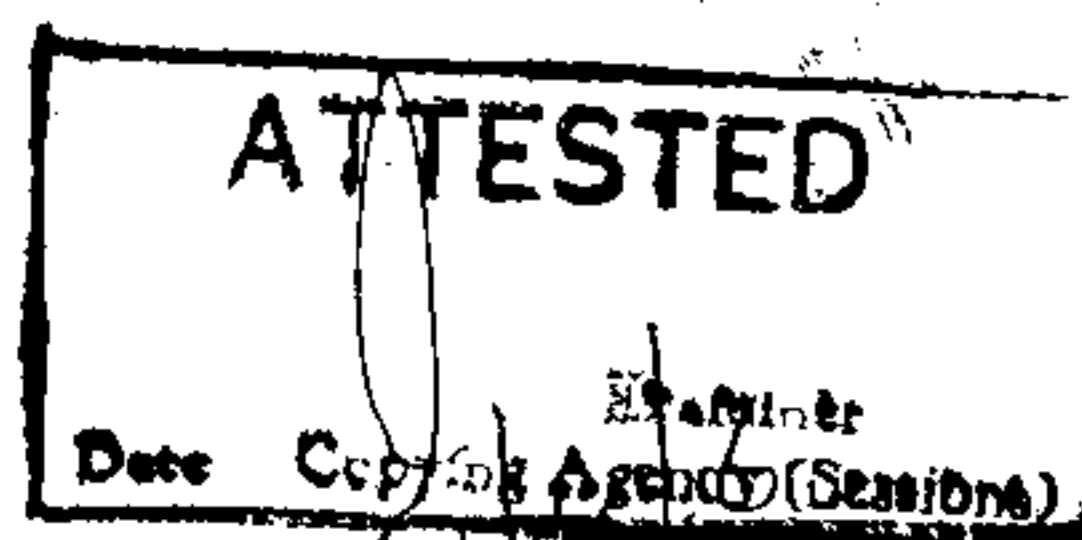


intimated by public notice in vernacular and in national newspapers.

She stated that she was not in a position to affirm or deny the suggestion that vernacular newspapers were not accessible to the accused. She stated that she was not aware as to whether the accused company had applied for winding up in 2004. She further stated that since she had no such information, as filed by the accused with the SEBI, she was not in a position to affirm or deny that the accused company had ceased operations in January, 1999. She deposed that she was not aware whether the company had paid penalty to the ROC on filling up the winding up application. She denied that she was deposing falsely.

12. The accused Pritam Kumar Vyas has placed on record a copy of a letter of resignation dated 11.11.98 along with postal receipt and acknowledgment card in support of his claim that he had resigned from the company. Certain copies of documents for striking the name of the company addressed to the Registrar of Companies along with court receipts and "ikramnama" signed by Lalit Kumar Ojha, Chandra Prakash Namdharani, Pritam Vyas and Deepak Kumar Vinayak dated 19.2.2004 have been placed on the record along with the written arguments and the accused have placed reliance on these documents also.

13. Documents have also been filed by accused Lalit Kumar Ojha being receipted copy of the letter of his resignation as





chairman and director of the company on 9.3.98, copy of the attendance register, copy of resignation letter addressed to ROC dated 31.3.98, letter purported to have been sent on 4.4.98 to the SEBI with postal receipt regarding his resignation, receipted copy of letter addressed to SBI, Bhilwara dated 2.4.98 requesting deletion of his name from the current account of the company, receipted copy dated 24.4.98 to the Inspector Shop and Commercial Establishments, Office of Deputy Labour Commissioner, Bhilwara informing him about his resignation and copy of publication of Dainik Lok Jivan dated 2.4.98 bearing a public notice informing about his resignation.

CONTENTIONS

14. I have heard the submissions made on behalf of SEBI and I have carefully perused the written arguments submitted on behalf of the accused. While the stand taken by the SEBI is that the accused had violated the regulations and were thus liable for the offences alleged against them, the accused have prayed for the dismissal of the complaint and the acquittal of the accused.

15. The accused have submitted that the accused had never been served with the letters dated 15.12.99, 29.12.99 and 10.12.99 and thus had no intimation of the requirements of the regulations, compliance of which was sought before 28.2.2000. It has been submitted that the public notice was effected in the English daily,

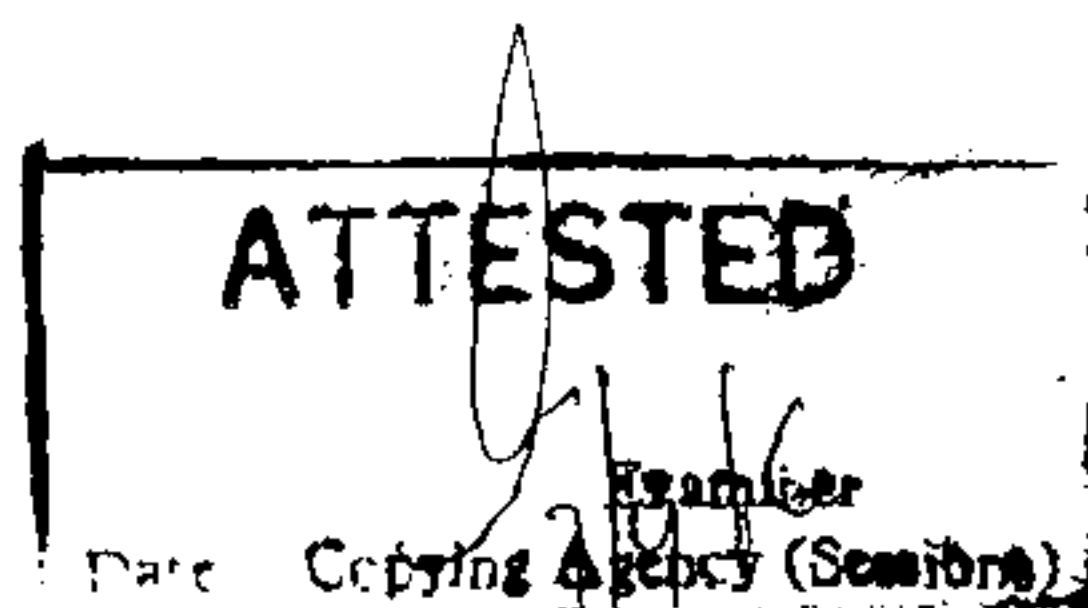




Hindustan Times of Delhi edition and the SEBI had not placed on record any copy of the publication in vernacular newspapers. It has been submitted that admittedly the SEBI had not sent letters to the directors themselves. Thus, it is contended that the directors, who were resident of Bhilwara and the company situated at Bhilwara had no notice whatsoever of the regulations and so in the absence of the knowledge they could not be accused of having violated Regulations of 1999.

16. Further contention of the accused is that since the accused no.1 suffered losses and had accumulated only Rs:99,770 from investors, the directors had closed the business in the year 1998 and it was for that reason that the shop where the accused no.1 had been having its office was also closed permanently and the various communications sent by the SEBI at this address were returned undelivered. It has been submitted that despite the SEBI having obtained addresses of the directors from the ROC, they chose not to give individual intimation to the directors and therefore the complainant had willfully withheld information from the directors about the necessity of complying with the Regulations of 1999 and therefore, the accused could not be found liable on account of the malafides of the SEBI.

17. It is contended further on behalf of the accused that the complaint has been filed on flimsy grounds since the complainant





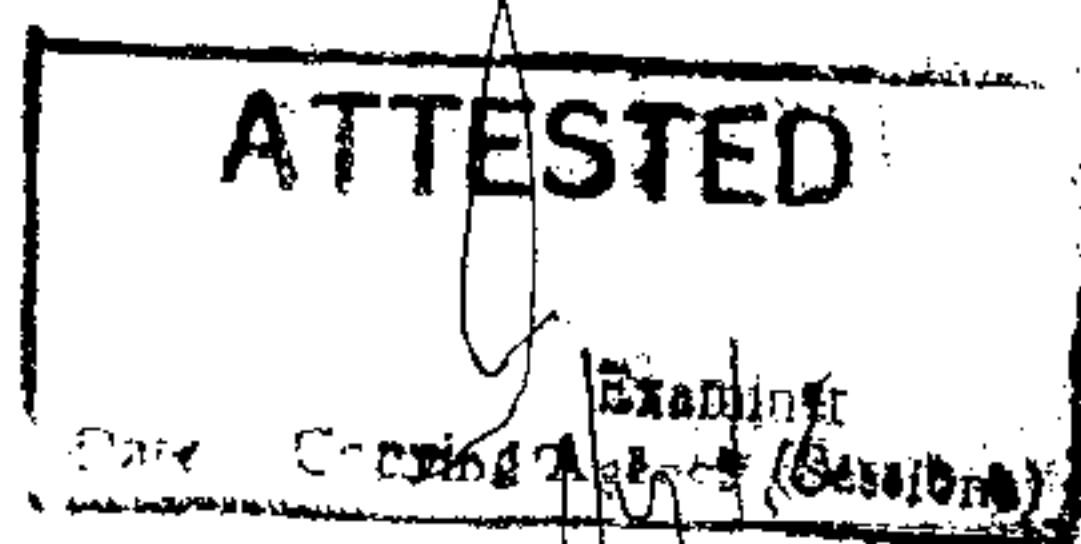
themselves admitted that the accused no.1 had applied for registration of the company vide its letter dated 12.1.98. It is also submitted that the accused no.1 had applied to the ROC office on

19.2.2004 for striking the name of the company under Section 560 of the Companies Act and the accused had been fined and had also paid the fine. It is submitted that the complaint had been filed without due compliance of Regulation no. 73(2) which required individual intimation and no individual intimation had been sent to the accused no.2-10 and hence, they were not liable for any violation. Hence, they prayed for an acquittal.

FINDINGS.

18. I have carefully considered the arguments submitted by both sides.

19. The Government had notified in 1997 that companies which were running Collective Investment Schemes were required to file information with SEBI regarding their schemes along with details of amounts mobilized, the names of Directors/Promoters etc., in case they were desirous of obtaining benefit of Section 12 (1) B of the SEBI Act 1992. Section 12 of the SEBI 1992 requires the registration of Stock Broker, Sub Broker, Share Transfer Agents etc., and Section 12 (1) B relates to the requirements of registration certificate from the board by any person who was sponsoring or carrying on venture, capital funds or Collective Investment Scheme





including mutual funds. Section 12 (1) B of the SEBI 1992 reads as

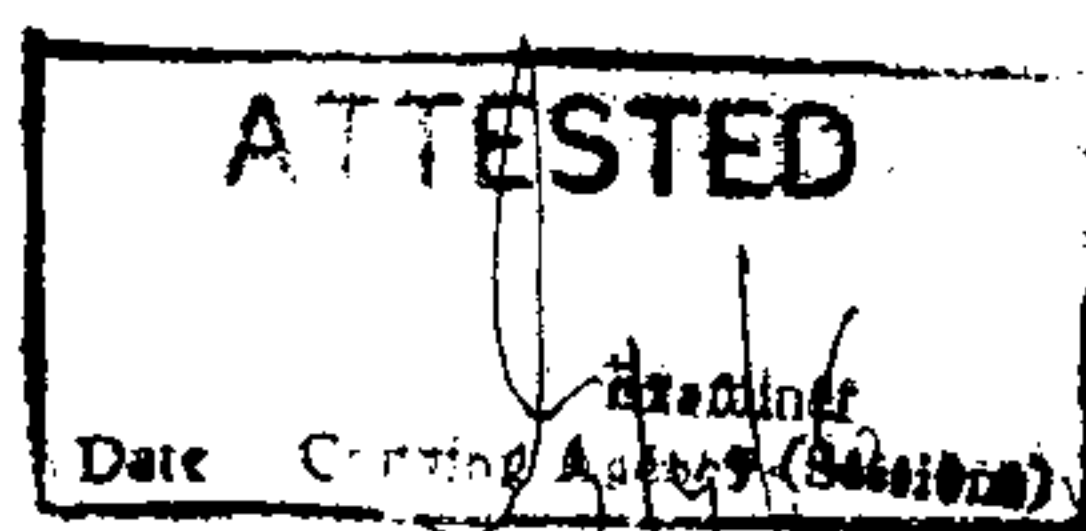
under:

~~"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 causing 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 or 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"

17. Even as per regulation 3 of the SEBI (Collective Investment Scheme) Regulations, there is complete bar on any person other than a Collective Investment Management Company which has obtained a certificate from carrying on or sponsoring or launching a CIS.

18. It is thus, amply clear that under the SEBI Act 1992 no person could carry on a Collective Investment Scheme without the certificate of registration granted by the Board. The proviso permitted such person who was already carrying on Collective Investment Scheme before the commencement of the Securities Law (Amendment) Act 1995 to do so till such time regulations were made u/s 30 (d)(2) of the Act. Thus the proviso entitled a person to continue the collective investment scheme without registration only till the promulgation of the regulations.

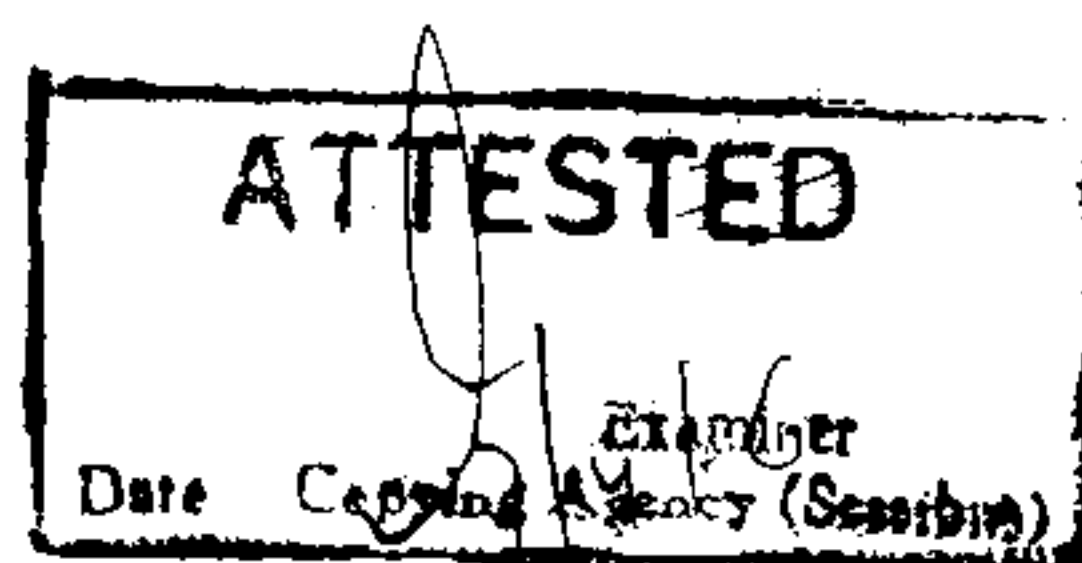


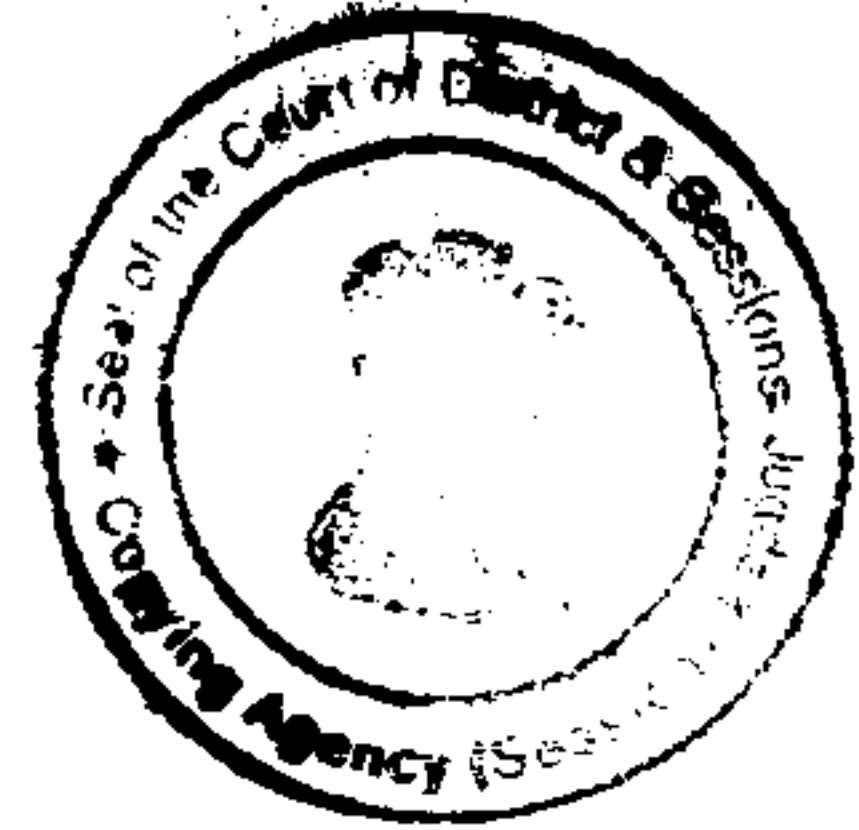


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19. There is no doubt that the accused were running a Collective Investment Scheme. Ex.CW1/1 and its annexures whereby the accused company had admitted their various schemes clearly establishes that the accused no.1 was involved in Collective Investment Schemes relating to plantation bonds. They had initially informed that under five schemes they had collected Rs.31,975/-. Vide their subsequent letter Ex.CW1/2 they informed that they had collected Rs.99,770/- in connection with their Collective Investment Scheme. Thus, the accused no.1 having applied for availing the benefit under Section 12(1) (B) of the SEBI Act, 1992 was subject to the SEBI Regulation notified in 1999. No other conclusion can be reached.

20. It is clear from the various communications placed on the record by the SEBI that the letters sent at the address furnished by the accused had been returned. Even in the written arguments, it is conceded that the premises had been closed by the accused. It is no one's case that the address given was an incorrect address. As regards the contention that each individual accused had not been duly informed by the SEBI, it may be mentioned that intimation to the company has been held by even the Apex Court, to be sufficient service. Moreover, the contents of the letters and orders had been published in the newspapers. It cannot be presumed that the accused had no access to any newspapers or could have had no

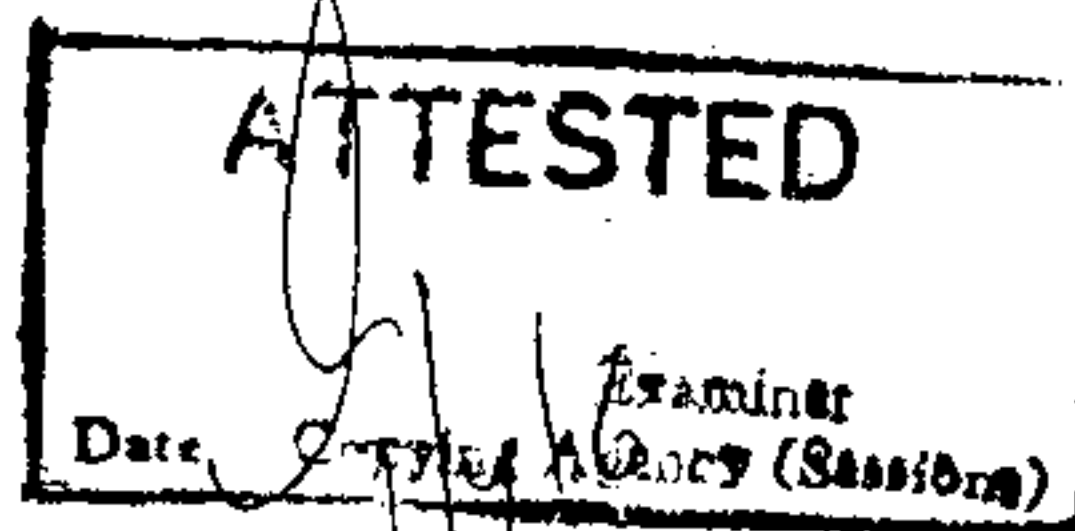




knowledge of the public notices. The first letter sent by them Ex.CW1/1 was itself in response to a public notice. That public notice informed all those conducting Collective Investment Schemes that they were to be bound by regulations which were under preparation. That notice had informed persons conducting the Collective Investment Schemes to furnish details to the SEBI if they had wanted to obtain benefit under Section 12 (1) (B) of the SEBI Act, 1992.

21. As noticed above, the benefit given under Section 12(1) (B) of the SEBI Act was the provisions of a stop gap arrangement till the regulations came into effect. Being fully aware of that benefit which would allow them to continue with their business, the accused sent Ex.CW1/1 specifically mentioning that it was an application for registering the company under Section 12(1)(B) of the SEBI Act. Even if there was no registration under Section 12(1)(B) of the SEBI Act, the fact remains that the accused were fully aware of the benefit of responding to that public notice by disclosing all details of the company and the various schemes along with the names of promoters and sponsors and directors to the SEBI.

22. Thus, they were knowing at the time they sent the letter Ex.CW1/1 that further regulations were to be notified. It cannot be expected that the company and the directors thereafter made no





effort to keep themselves informed of the requirements under the regulations. If they were negligent in not informing the SEBI about

change in their address and of the cessation of their business and were further negligent in not keeping a watch over public notices issued in newspapers, they have to be held responsible for their own lapse. The ignorance they claim cannot be laid at the doors of the SEBI. In this connection, the plea taken by the accused that under Regulation 73(2), the SEBI was required to give individual intimation, is somewhat misplaced inasmuch as the individual intimation contemplated was to the individual companies and not to the individual directors, along with a public notification in which the name of the company was mentioned at serial no. 158. Thus, the plea of ignorance cannot extricate the accused from the liability under the SEBI Collective Investment Scheme Regulation, 1999.

23. The only question that now remains to be addressed is, which of the accused could be held liable for the lapse resulting in the non-compliance of the regulations. Accused Pritam Kumar Vyas has claimed that he had resigned on 11.11.98 as director. The evidence he has produced on the record to substantiate this claim is not satisfactory inasmuch as the requirement of law has not been fulfilled by merely addressing a letter to the Registrar of Companies that w.e.f 11.11.98 he had voluntarily resigned. The resignation has to be in terms of the provisions of the Companies Act. In the case





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of Lalit Kumar Ojha, the form 32 has not been filed to show that the Registrar of Companies had recorded the resignation. However, he

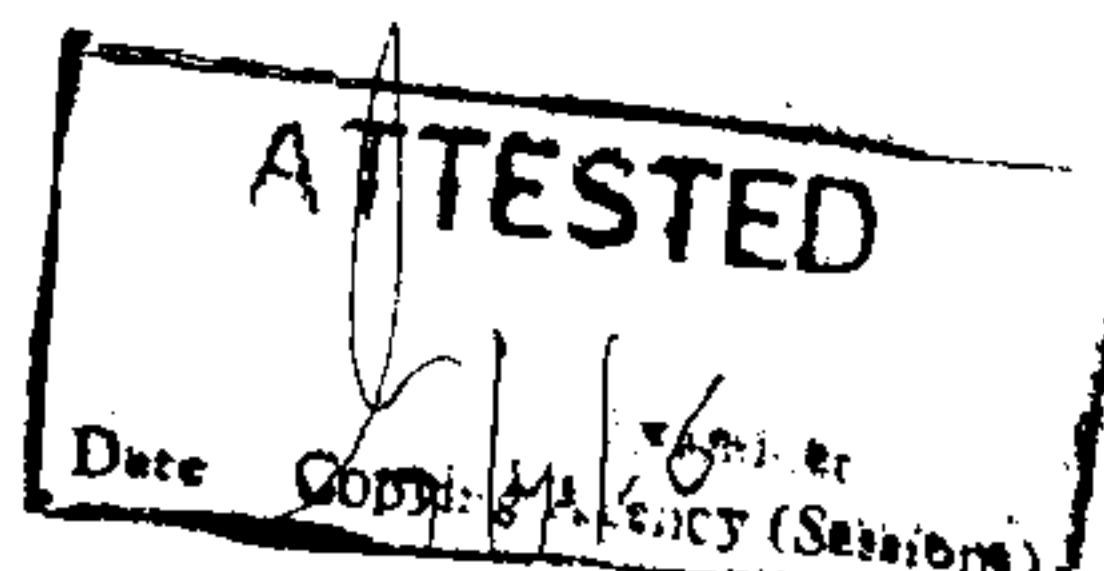
~~has filed several other documents to claim non participation. The~~

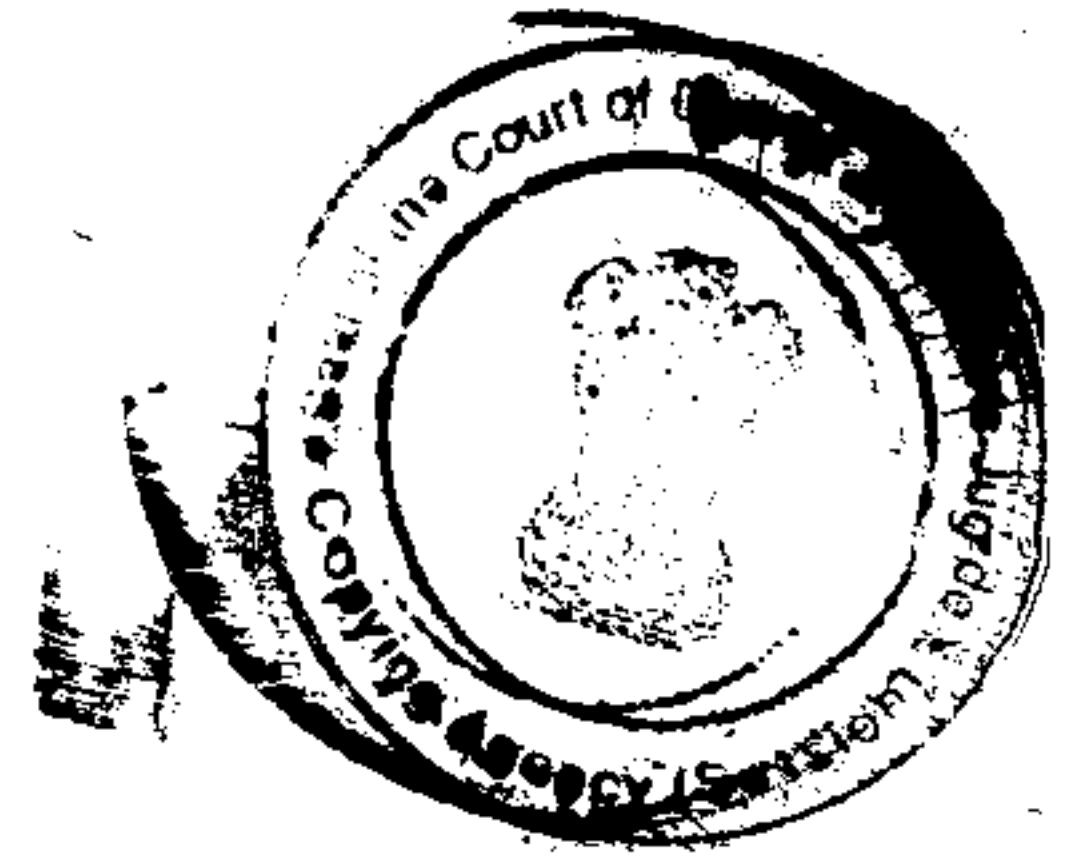
accused Pritam Kumar Vyas along with Chandra Prakash Namdharani, Deepak Vinayak and Lalit Kumar Ojha had also submitted an affidavit on 19.2.2004 acknowledging their liabilities in respect of the company. As far as accused Pritam Kumar Vyas is concerned, he has not effectively proved that he was not incharge of the affairs of the company or that the lapse had occurred without his knowledge or connivance.

24. In respect of accused Lalit Kumar Ojha, in the light of the various documents he had placed on the record, informing the various local authorities and the bank and further issuing a public notice excluding his liability from the affairs of the company, it can be said that after March-April, 1998 this accused was not involved in the affairs of the company and after the regulations were notified, he cannot be held to have been in such charge of the affairs of the company to hold him liable. To my mind, he has established amply that the lapse had occurred without his knowledge or connivance.

The document signed by accused Chandra Prakash Namdharani forming part of Ex.CW1/2 dated 28.7.98 giving the details of the directors, has also excluded the name of Lalit Kumar Ojha as a director. In the circumstances, despite the mention of his name in

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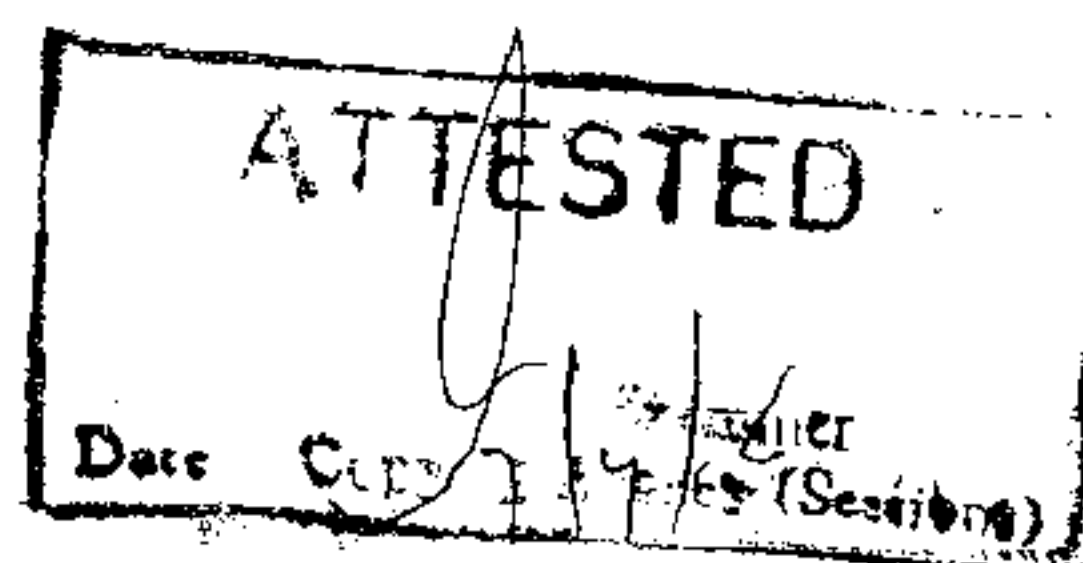




the "Ikrarnama", I conclude that the accused Lalit Kumar Ojha was not in any way liable for the violation of the regulations by the accused company.

25. The SEBI has itself relied on Ex.CW1/2. The details of directors as on 28.7.98 furnished by the accused company names accused Chandra Prakash Namdharani, Pritam Kumar Vyas and Deepak Vinayak as the directors. The other accused were mentioned in Ex.CW1/1 as promoters. Once directors had been appointed to the company, the responsibility of the promoters ceased as the first directors. The onus was on these accused namely, Chandra Prakash Namdharani, Pritam Kumar Vyas and Deepak Vinayak to have established that the lapse had occurred without their knowledge or connivance. This, as discussed above, they have failed to establish.

26. With regard to the accused Arvind Kumar, he claimed that he had been made a director by his brother Chandra Prakash and had never been involved in the company. Accused Gori Shanker Ojha stated that he had only been a promoter and was not involved in the daily affairs of the company. The accused Narendra Ojha has also stated that he had attended the office only once and had not been aware of how much money had been collected and what the legal requirements were. The accused Mahesh Ojha has claimed that he had attended the office of the company only once to



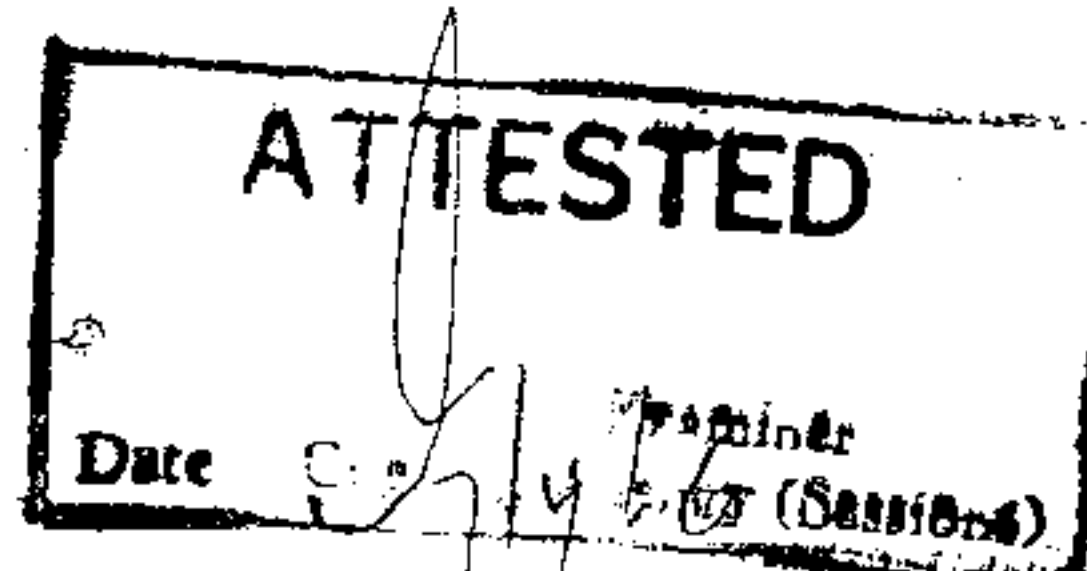


append his signatures. He claimed that he was involved in his milk dairy business and was not involved in the daily affairs of the company. The accused Bheru Lal has stated that he had joined the company in the capacity of a promoter and hence was not involved in the daily affairs of the company.

27. From the perusal of the details of the promoters annexed to Ex.CW1/1, it is clear that Arvind Kumar, Gori Shanker Ojha, Narendra Ojha, Mahesh Ojha and Bheru Lal were involved in the company only as promoters. As noticed above, once the regular directors were appointed in the company, the responsibility of the promoters as the first directors ceased. In these circumstances, their claim that they did not have any direct role in the conduct of the affairs of the company may be accepted, as there is no other evidence to the effect that despite their not being directors, they were in some other way involved in the conduct of the affairs of the company and were thus responsible for due compliance of the requirements of the regulations.

CONCLUSION

25. In the circumstances, while I acquit the accused Lalit Kumar Ojha, Arvind Kumar, Gori Shanker Ojha, Narendra Ojha, Mahesh Ojha and Bheru Lal, I find the accused no.1 M/s. Golden Jublee Agro Plantations Ltd., accused no.2 Chandra Prakash Namdharani, Pritam Kumar Vyas and Deepak Vinayak guilty of having violated





the SEBI Regulations 1999 i.e, Regulation 68(1) (2) 73 and 74 and the Provisions of the SEBI Act 1992. They are found guilty accordingly and are liable for punishment under Section 24(1) R/W

Section 27 of the SEBI Act.

The accused are entitled to be heard on sentence.

Announced in the Open Court.
Dated: 3.4.06

Asha Menon
(ASHA MENON)
Addl. Sessions Judge:
Delhi.

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in the court at POC
3/4/06*

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Pratap

*Pratap
(per coo)*





IN THE COURT OF MS ASHA MENON: ASJ: DELHI.

CC NO.15/05

SEBI VS.

GOLDEN JUBLEE AGRO
PLANTATIONS LTD & OTHERS

ORDER ON SENTENCE

The accused have been heard on the point of sentence. The accused plead that they were not aware of the nitty grits of law inasmuch as they had been dependent on Lalit Kumar Ojha for advise and when he himself had resigned, the accused had set about refunding the amounts of investment collected. They have prayed for a lenient view.

In the present case keeping all the facts and circumstances in mind, I am of the considered view that the ends of justice would be met if the accused are sentenced to a fine of Rs.4,000/- each. In default of fine, they shall undergo SI for one month.

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

Announced in the Open Court.
Dated: 3.4.2006.

Asha Menon
(ASHA MENON)
Addl. Sessions Judge: Delhi.

*Copy be given to accused
in the Court at FOC
of 03/04/06*

Deepak

Prakash
(PRASHANTH)

Deepak
(For Co.)

