



IN THE COURT OF ADDITIONAL CHIEF METROPOLITAN

MAGISTRATE, DELHI

CC NO: 42 OF 2004

14/01/04

Securities and Exchange Board of India, a statutory body established under the provisions of Securities and Exchange Board of India Act, 1992, having its Head office at Mittal Court, B - Wing, 224 Nariman Point, Mumbai 400 021 represented by its Legal Officer, Shri Sharad Bansode.

...Complainant

VERSUS .

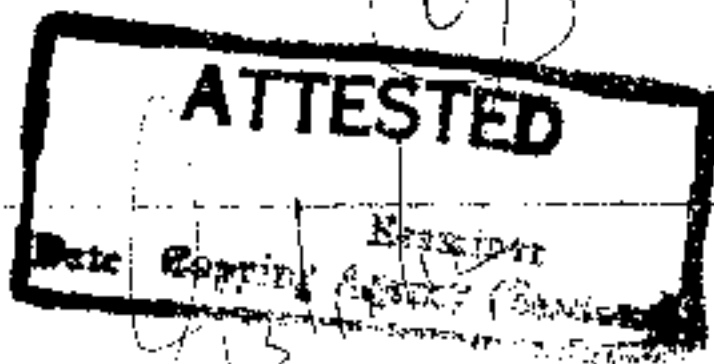
1. H.V. Forests (India) Ltd. a Company incorporated Under the Companies Act, 1956, having its Regd. Office at : Village Baltana, Distt. Patiala, Patiala, Punjab. And Head Office at : SCO No. 25, Zirakpur, Kalka Road Mahaeshpur, Sec-21, Panchkula, Haryana.
2. Shri Harish Sharma S/o Shri K.L. Sharma, Director of Accused No.1, R/o:253, Sector 4, Panchkula, Haryana.
3. Shri Harinder Singh Saini S/o Shri Rajinder Singh, Director of Accused No.1, R/o: 483, Sector 12, Panchkula, Haryana.

85

Ex CW 1/2

A S J Dhu  
17-2-21

82/83





2

4. Shri Karam Chand Hussaini S/o Shri  
Rattan Singh, Director of Accused  
No.1, R/o: Village: Hussaini, Post  
Office Naraingarh, Distt. Ambala,  
Haryana.

PS.

.....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, 1982

May It Please Your Honour:





Item No. 14

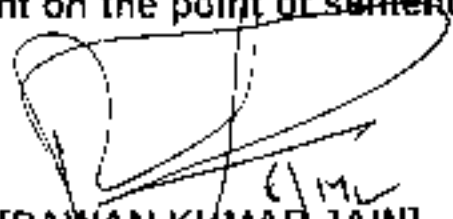
CC No. 34/10

06.12.2012

Present: Ms. Renu Sharma, Advocate, counsel for SEBI.  
Accused No. 1 is company represented by none.  
Accused No. 2 and 4 are PO vide order dated 03.07.2009  
and 15.11.2009 respectively.  
Accused No. 3 is in person with counsel Sh. A.K. Bansal,  
Advocate.

Vide separate judgment, accused No. 1 and 3 are held guilty  
for the offence punishable under Section 24 (1) r/w Section 27 (1) and 27  
(2) of the SEBI Act.

Renotify the matter for argument on the point of sentence  
on 07.12.2012.

  
[PAWAN KUMAR JAIN]  
ASJ-01/CENTRAL/DELHI  
06.12.2012





Item No. 9  
CC No. 34/10  
07.12.2012

Present: Sh. Sanjay Mann and Ms. Renu Sharma, Advocates,  
counsels for SEBI.  
Convict No. 2 is in person with counsel Sh. A.K. Bansal,  
Advocate.  
None for the convict No. 1.

Argument heard on the point of sentence.

Vide separate order, convict No. 2 is burdened with the fine amount of ₹ 3.50 lac in default three months simple imprisonment for the offence punishable under Section 24 (1) of SEBI Act. Convict No. 1 is burdened with the fine of ₹ 5 Lac.

Counsel for SEBI submits that SEBI shall take appropriate steps for the recovery of the fine amount after tracing out its assets of the convict No. 1. Request is allowed.


Copy of judgment along with the copy of sentence be given to the convict No. 2/his counsel free of cost.

Since, accused No. 2 and 4 are proclaimed offender, file be consigned to record room with direction the same be revived as and when they are apprehended/arrested.

Ld. counsel moves an application for seeking time to deposit the balance amount of ₹ 50,000/-. Counsel submits that he has deposited the amount of ₹ 3 lac and he needs two days time to deposit the balance amount of ₹ 50,000/-.

Considering the fact that convict No.2 has deposited the substantial amount. he is permitted to deposit the balance amount of ₹ 50,000/- by 14.12.2012.

Put up on 14.12.2012

  
[PAWAN KUMAR JAIN]  
ASJ-01/CENTRAL/DELHI  
07.12.2012





SEBI Vs. M/s H. V. Forest India Ltd. & others

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

Complaint Case No. 34 of 2010  
ID No: 02401R5171672004

**SECURITIES AND EXCHANGE BOARD OF INDIA**, a statutory body established under the provisions of Securities and Exchange Board of India Act, 1992, having its Head office at Mittal Court, B-Wing, 224 Nariman Point, Mumbai-400 021 represented by its Legal Officer, Ms. Deepika Jaggi, Manager, SEBI.

Versus

1. **H.V. Forests (India) Ltd.,**  
a company incorporated under the Companies Act, 1956 and having its Registered office at: Village Baltana, Distt. Patiala, Patiala, Punjab and Head Office at : SCO No. 25, Zirakpur, Kalka Road Mahaeshpur, Sector-21, Panchkula, Haryana  
.....Accused no.1
2. **Sh. Harish Sharma**  
S/o Sh. K. L. Sharma,  
Director of Accused No. 1,  
R/o 253, Sector 4, Panchkula  
Haryana.  
.....Accused no.2
3. **Sh. Harinder Singh Saini**  
S/o Sh. Rajinder Singh,  
Director of Accused No. 1,  
R/o 483, Sector 12, Panchkula,  
Haryana.  
.....Accused no.3

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4. Sh. Karam Chand Hussaini  
S/o Sh. Rattan Singh,  
Director of Accused No. 1,  
R/o Village, Hussaini, Post Office  
Naraingarh, Distt. Amabala,  
Haryana.

.....Accused no.4

Date of Institution : 14.01.2004  
Date of committal to Session Court : 19.04.2005  
Date of judgment reserved on : 29.11.2012  
Date of pronouncement of judgment : 06.12.2012

Present: Sh. Sanjay Mann & Sh. R.K.Pillai, Advocates,  
Counsel for SEBI.  
Sh. A.K.Bansal, Advocate, counsel for accused no.3

## J U D G M E N T :

1. This criminal complaint was preferred by the Securities & Exchange Board of India (hereinafter referred to as "SEBI" or "the complainant"), on January 14, 2004 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. Four persons were arrayed as accused in the criminal

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complaint preferred under Section 200 Cr.P.C., they being M/s H.V Forests (India) Ltd. (hereinafter, "A1" or "the Company Accused"), accused No. 2 Sh. Harish Sharma ("A2"), accused No.3 Sh. Harinder Singh Saini ("A3") and accused No.4 Sh. Karam Chand Hussaini ("A4"). It is alleged that A2 to A4 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 provisions contained in Section 27 of the SEBI Act.

3. It is alleged in the complaint that A1 had floated the Collective Investment Schemes (CIS) and raised amount approximately ₹ 23 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 January 14, 2004 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





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High Court, under orders of the Ld. District & Sessions Judge, this case was transferred on April 19, 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 July 3, 2009, A2 was declared proclaimed offender on account of his non-appearance. Vide order dated November 5, 2009, A4 was also declared proclaimed offender on account of his non-appearance. Thereafter, vide order dated November 5, 2009, a notice for the offence punishable under Section 24 read with section 27 of the SEBI Act was served upon the A1(company) & A3 wherein A3 pleaded not guilty and claimed trial by stating that he was not an active director and had nothing to do with the business of company accused. He further submitted that he had already tendered his resignation on July 15, 1998 to the Board of Directors of company accused and requisite information i.e. form No. 32 had already been sent to the concerned ROC. In that notice, none had responded on behalf of company accused.

7. To bring home the guilt of accused, complainant has examined only one witness namely Ms. Deepika Jaggi, Manager, SEBI as CW1. Thereafter, A3 Harinder Singh Saini was examined under Section 313 Cr.P.C. wherein he admitted that he was one of the directors in the company accused in the year 1997 but took the plea that he had resigned from the directorship in the year 1998. He further stated that he was aware about the information which company accused had furnished to the SEBI during his tenure but he did not know about the information which were furnished after his resignation. He further submitted that







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company accused had not mobilized any fund in his tenure and he was not involved in the day to day affairs of the company accused. To prove his innocence, A3 has examined Sh. Joginder Singh, Clerk of ROC as DW1 and Sh. Harinder Singh Saini (A3 himself) as DW2.

8. Learned counsel appearing for A3 vehemently contended that company accused was incorporated on November 22, 1996 and as per Ex. CW1/3, the amount was mobilized till November 30, 1997, thus it was contended that as per the complainant's version, entire amount was mobilized during the period November 22, 1996 to November 30, 1997. It was argued that since A3 was not the director in the company accused during the said period, A3 could not be held liable for the violation, if any committed by the company accused. It was contended that A3 had joined the company accused after November 30, 1997 and he had resigned the company accused w.e.f. July 15, 1998, thus he could not be held liable for the violations, if any, on the part of company accused.

9. Per contra, learned counsel appearing for SEBI contended that the name of A3 was mentioned in the brochure of Collective Investment Schemes, which establishes that he was one of the directors in the company accused when company accused had mobilized funds from general public at large. It was further submitted that company accused was incorporated on November 22, 1996; thus company accused was bound to obtain the certificate of registration before mobilizing funds from the general public at large. Since, company accused failed to obtain the mandatory certificate of registration, company accused had violated mandatory provisions of Section 12(1B) of the Act. It was further contended that since company accused failed to file the winding up and repayment report in terms of Regulation 73 of CIS Regulations, company





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accused had also committed the violation of CIS Regulations, which are punishable under Section 24 of SEBI Act.

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

11. Before coming to the liability of A3, I deem it appropriate to ascertain as to whether company accused had violated any provision of SEBI Act at the time of mobilizing funds through various collective investment schemes or not?

12. It was undisputed fact that company accused was incorporated on November 22, 1996. Moreover, this fact is also proved from the Memorandum and Articles of Associations of the company accused, which was sent through letter Ex. CW1/3 by the company accused to the SEBI. From the Memorandum & Articles of Associations of company accused, it is established that company accused was incorporated on November 22, 1996.

13. Section 12(1B) was inserted in the SEBI Act by way of amendment Act 9 of 1995. The effect of inserting Section 12(1B) in the Act was 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 schemes unless he obtained a certificate of registration from the Board in accordance with the regulations. Admittedly, company accused came into existence only on November 22, 1996, thus company accused was not supposed to raise any fund through collective investment schemes unless it obtained a certificate of





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registration in terms of Section 12(1B) of the Act.

14. No doubt, under proviso to Section 12(1B), some relaxation has been provided by the statute from obtaining the certificate of registration but that relaxation is applicable only to those companies which were in existence on January 25, 1995 and were carrying <sup>on</sup> any collective investment scheme and such companies were permitted to continue with the existing schemes till the Regulations were notified under clause (d) of Sub-section 2 of Section 30. Since, company accused was not in existence on January 25, 1995, the relaxation provided under proviso to Section 12(1B) is not applicable to the facts of the present case.

15. Pursuant to the press release dated November 18, 1997, company accused had sent a letter dated December 12, 1997 to the SEBI (Ex. CW1/3) wherein company accused had also sent the detail of amount, which company accused had collected till November 30, 1997. As per the detail furnished by the company accused, company accused had generated ₹ 22,99,980/- till November 30, 1997 through five Collective Investment Schemes. Since, company accused had mobilized the said amount without obtaining mandatory certificate of registration, company accused had violated Section 12(1B) of the SEBI Act by mobilizing the said amount.

16. Indisputably, the CIS Regulations were notified w.e.f October 15, 1999. In terms of Regulation 5, the companies which were operating any collective investment scheme at the time of notification of Regulations, were supposed to apply within two months to obtain the certificate of registration with the SEBI but company accused failed to

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**ATTESTED**

\_\_\_\_\_  
Examiner

Date \_\_\_\_\_  
Agent (Signature)



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make any such application. Once, company accused failed to make any such application, company accused was bound to refund the amount to the investors and to submit the winding up and repayment report with the SEBI on the prescribe formate in terms of Regulation 73 of CIS Regulations. Admittedly, company accused failed to submit winding up and repayment report on the prescribed format, thus company accused had also violated Regulations 5 & 73 of CIS Regulations, which are punishable under Section 24(1) of SEBI Act.

17. Now coming to the contention raised by the learned defence counsel that A3 is not liable for the said violations as he was not the director in the company accused during the period November 22, 1996 to November 30, 1997 ?

18. SEBI has filed the Articles of Associations of company accused wherein the name of first directors is mentioned. But, admittedly, the name of A3 is not mentioned therein. As per clause 88 of Articles of Associations of company accused, all the first directors were required to be retired on the first Annual General Meeting of the company accused, thus all the first directors were supposed to retire on the first Annual General Meeting of the company accused. Thus, mere fact that his name is not mentioned in the list of first directors is not sufficient to cull out that A3 was not the director in the company accused at the relevant time.

19. As already stated that company accused had sent certain information to the SEBI through its letter dated December 12, 1997 (Ex. CW1/3), which includes the detail of its directors/sponsors. As per the said letter, A3 was one of the directors in the company accused. Learned





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counsel appearing for A3 submits that since the letter was sent only on December 12, 1997, it cannot be presumed that A3 was director in the company accused during November 22, 1996 to November 30, 1997. Again, company accused had also sent a letter to the SEBI on May 28, 1998 (Ex.CW1/4) wherein company accused furnished the detail of its directors and as per the said letter, A3 Harinder Singh Saini was one of the directors in the company accused. In the said letter, company accused had furnished the detail of its balance-sheet for the year ending March 31, 1997. This shows that company accused had furnished the information of its directors in the year 1997. Learned defence counsel again took the plea that since the letter was written only on May 28, 1998 and no date of induction of A3 in the Board of Directors is mentioned therein, no presumption can be drawn against A3 that he was director during the period November 22, 1996 to November 30, 1997.

20. In his statement under Section 313 Cr.P.C, accused admitted that he was one of the directors in the company accused but took the plea that he had resigned from the company accused in the year 1998. He further stated that he was aware about the information which company accused had furnished to the SEBI during his tenure but he did not know about the information which were furnished after his resignation. In his statement recorded under Section 313 Cr.P.C, he took the plea that he joined the company accused in the year 1997, but he failed to produce any document in this regard. Though, in his testimony, he examined DW1 Sh. Joginder Singh, clerk from the office of ROC but same is not helpful to him as he deposed that the record pertaining to the appointment of A3 Harinder Singh Saini as director had already been destroyed vide Notification dated April 9, 2003. A3 also appeared in the witness box and examined himself as DW2. In his deposition, he

*[Signature]*  
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deposed that he was inducted in the company accused as director without his consent and knowledge by main directors namely Vijay Dhawan, Ms. Kavita Dhawan and Sh. Harish Sharma and came to know about this fact in the first week of July 1998 and thereafter, he resigned from the company accused. He further deposed that said persons had forged his signature while inducting him as director in the company accused. But surprisingly, he had not mentioned all these facts in his resignation, nor he initiated any proceedings against any such persons for forging his signature. On the converse, in his statement under Section 313 Cr.P.C. he candidly admitted that he was director in the company accused but he resigned in the year 1998. In his statement under Section 313 Cr.P.C., he did not take the plea that the said persons had forged his signature or that he had been inducted as director without his consent or knowledge. This shows that the deposition of DW2 is the result of after thoughts, thus same does not inspire any confidence.

21. As already stated that company accused had sent certain informations to the SEBI through its letter Ex. CW1/3 which includes the detail of collective investment schemes and its brochure. Perusal of the brochure, reveals that the name of A3 is also mentioned therein as director of the company accused. There is no explanation whatsoever from the accused side, how his name had been appeared in the brochure of the schemes as the director. On the contrary, it proves that A3 was one of the directors in the company accused and due to that reason, his name is reflected in brochure as a director. This, further establishes that he was also responsible for mobilizing funds from public through various collective investment schemes launched by the company accused. This further proves that he was one of the directors who were in-charge of, and responsible, to the company accused for its conduct i.e. raising of





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fund, thus he is also liable for the said violations.

22. It is admitted case of A3 that he had resigned from the Board of Directors w.e.f. July, 15, 1998, which is corroborated by DW1. Thus, he is liable for the violations committed by the company accused till July 15, 1998. As already held that company accused had mobilized the fund prior to July 15, 1998, thus A3 is also liable for the said violations.

23. Learned counsel appearing for the accused contended that since A3 was not the director in the company accused when CIS Regulations were notified, thus, he had no opportunity to comply with the provisions of CIS Regulations.

24. No doubt, A3 was not the director in the company accused after July 15, 1998 but it does not mean that he will be absolved from his wrongful acts which he had committed during his tenure. Being the director of the company accused, it was his responsibility to see whether company accused had complied with the mandatory provisions of SEBI Act before mobilizing funds under CIS Regulations or not? Since, company accused had mobilized funds in violation of mandatory provisions of Section 12(1B) of the Act, A3 being the director is also liable for the said violations in terms of Section 27(1) as well as 27(2) of the SEBI Act.

25. Pondering over the ongoing discussion, I am of the opinion that SEBI has succeeded to establish beyond the shadow of all reasonable doubts that company accused had mobilized funds in violation of Section 12(1B) of the SEBI Act and also violated Regulations





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5 & 73 of CIS Regulations which are punishable under Section 24(1) of the SEBI Act. Simultaneously, SEBI has also succeeded to establish beyond the shadow of all reasonable doubts that A3 Harinder Singh Saini being the Director of company accused is also liable in terms of Section 27 (1) & 27(2) of SEBI Act for the violation of Section 12 (1B) of the Act committed by the company accused, thus, I hereby hold the A1 i.e. H.V. Forests (India) Ltd. and A3 Harinder Singh Saini guilty for the offence punishable under Section 24(1) of SEBI Act read with Section 27 (1) & 27(2) of the SEBI Act.

Announced in the open Court  
On this 6<sup>th</sup> day of December, 2012



(Pawan Kumar Jain)  
Additional Sessions Judge-01,  
Central, THC/Delhi

R/Sir  
Certified copy of  
Judgment given to  
the counsel of A1 & A3  
in open court of court.

From  
Sh. A. K. Bansal

  
2/12/2012





SEBI Vs. M/s H. V. Forest India Ltd. & others

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

Complaint Case No. 34 of 2010  
ID No: 02401R5171672004

**SECURITIES AND EXCHANGE BOARD OF INDIA**, a statutory body established under the provisions of Securities and Exchange Board of India Act, 1992, having its Head office at Mittal Court, B-Wing, 224 Nariman Point, Mumbai-400 021 represented by its Legal Officer, Ms. Deepika Jaggi, Manager, SEBI.

**Versus**

1. **H.V. Forests (India) Ltd.,**  
a company incorporated under the Companies Act, 1956 and having its Registered office at: Village Baltana, Distt. Patiala, Patiala, Punjab and Head Office at : SCO No. 25, Zirakpur, Kalka Road Mahaeshpur, Sector-21, Panchkula, Haryana  
.....Convict no.1
2. **Sh. Harinder Singh Saini**  
S/o Sh. Rajinder Singh,  
Director of Accused No. 1,  
R/o 483, Sector 12, Panchkula,  
Haryana  
.....Convict no.2

**Present:** Sh. Sanjay Mann & Ms. Renu Sharma, Advocates,  
Counsel for SEBI.  
Sh. A.K.Bansal, Advocate, counsel for convict No. 2

**ORDER ON THE POINT OF SENTENCE:**

1. Vide separate judgment dated December 06, 2012, accused No. 1 and 3 were held guilty for the offence punishable under Section





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24(1) r/w Section 27 (1) and 27 (2) of SEBI Act.

2. Learned counsel appearing for convict No.2 requests to take a lenient view on the grounds that the convict remained as a Director in the company accused for a very short period as he resigned from the Directorship w.e.f. July 15, 1998. It is further submitted that convict has no criminal antecedent and he is appearing in the Court for the last 8 years without any default. It is further submitted that since he had no connection with the company accused after July 15, 1998, he is not aware whether the company accused had refunded the amount to the investors or not. However, SEBI has not filed any complaint of the investors to show that company had not refunded the amount.

3. Per Contra, counsel appearing for SEBI requests for some substantial punishment on the ground that the company had not filed winding up and repayment report till date; nor refunded the amount to the investors.

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

5. As already held that convict No. 2 had resigned from the company accused w.e.f. July 15, 1998, thus, thereafter, convict No. 2 had no control over the affairs of company accused, thus, he was not in the position to comply with the provisions of CIS Regulations which were notified in October, 1999 only. No doubt, there is no evidence to show that company accused had refunded the amount to the investors but





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simultaneously SEBI has also failed to produce any document showing that any investor had made any complaint to the SEBI that he had not received the amount. In the absence of any cogent evidence, this cannot be taken as an aggravating factor as stated by counsel for the SEBI. Record further reveals that convict is facing trial since 2006 without much default on his part and he has no previous criminal antecedents.

6. Considering all the aggravating and mitigating factors, I am of the view that convict No. 2 deserves a lenient view and ends of justice will be met if he be burdened with substantial amount of fine. Accordingly, I hereby, impose of fine of ₹ 3.50 lac in default three months simple imprisonment for the offence punishable under Section 24 (1) of SEBI Act. Convict No. 1 is burdened with the fine of ₹ 5 Lac.

7. Counsel for the SEBI submits that SEBI will take appropriate steps for the recovery of the fine amount of company (convict No.1) after tracing out its assets.

8. Copy of judgment along with the order on the point of sentence be given to the convict No. 2/his counsel free of cost.

9. Since, accused No. 2 and 4 are proclaimed offenders, file be consigned to record room with direction the same be revived as and when they are apprehended/arrested.

Announced in the open Court  
On this 7<sup>th</sup> day of December, 2012

(Pawan Kumar Jain)  
Additional Sessions Judge-01,  
Central, THC/Delhi

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2. In  
(certified copy of  
Sentence given to  
the accused free of cost  
in open court.)

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12/12/12

For A.K. Bhatnagar

12/12/12

Office of the District & Sessions Judge	
Delhi	
Certified to be True Copy	
Examiner	
Date	Copied by (Name & Designation)
Auth.	on 28 of 11
In the presence of	