

IN THE COURT OF THE ADDL. CHIEF METROPOLITAN MAGISTRATE,

TIS HAZARI, DELHI

CC NO: 31/2003
21/11/03

1. Securities and Exchange Board of India, a statutory body established under the provisions of Securities and Exchange Board of India Act, 1992, having its regional office at Block No.1, Rajendra Bhavan, Rajendra Place District Centre, New Delhi-110008, Represented by its Asst. General Manager, SEBI, New Delhi. Smt. Jyoti Jindgar.

82401R6227082003

67
27/9/03
...Complainant

Vs.

1. Oriental Housing Development Finance Corpn. Ltd. a company incorporated under the provisions of Companies Act, 1956 and having its Corporate Office at 202 - 203, Pal Mohan Sadan, Rajendra Place, New Delhi 110 008.
2. Sh. Sarjeet Singh, S/o Not known to the complainant; Occupation: Director of the Accused No.1; Resident of C-18, Duggal Estate, Devli Road, Khanpur Extn. New Delhi 110 062.
3. Shri N S Saini, S/o Not known to the complainant; Occupation Director of the Accused No.1; resident of C- 18, Duggal Estate, Devli Road, Khanpur Extn. New Delhi 110 062
4. Shri Nanak Singh S/o Not known to the complainant; Occupation Director of the Accused No.1; Resident of C-18, Duggal Estate, Devli Road, Khanpur Extn. New Delhi 110 062.
5. Dr. Sukhcharan Singh S/o Not known to

Ex (w)/2

90
AST Delhi
9/5/2011

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...Accused

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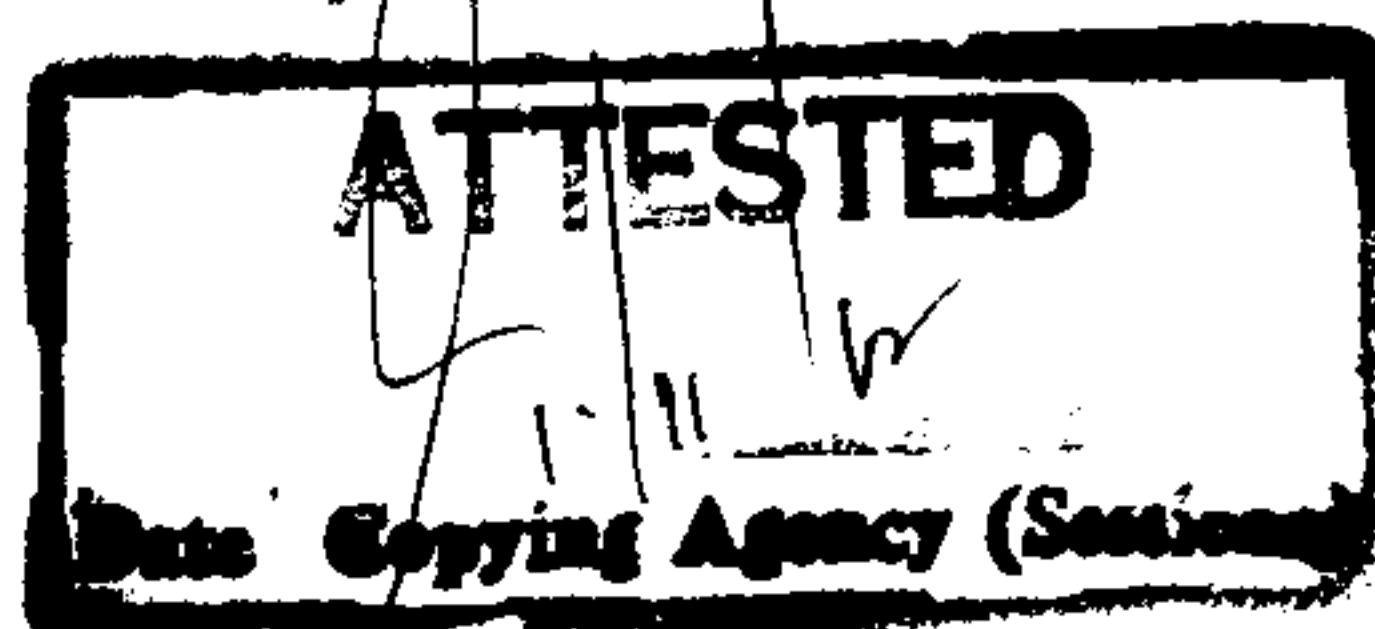
ATTESTED



the complainant; Occupation Director of
the Accused No.1; Resident of 8571, S.
George Washington, Yoba City CA -
95993, USA.

6. Shri H S Hanspal S/o Not known to the
complainant; Occupation Director of the
Accused No.1; Resident of K 17, Rajouri
Garden, New Delhi.

**COMPLAINT UNDER SECTION 190 and 200 OF THE CODE OF CRIMINAL PROCEDURE,
1973 READ WITH SEC. 24(1) AND 27 OF SECURITIES AND EXCHANGE BOARD OF
INDIA ACT, 1992**





Item No. 13

CC No. 73/10

17.10.2012

Present: Sh. R.K. Pillai, Advocate, counsel for SEBI.
Accused No. 2, 3 & 4 are PO vide order dated 28.04.2006.
Proceedings qua accused No. 5 has been abated vide
order dated 04.02.2011 and 09.05.2011.
None for company accused/official liquidator.
Accused No. 6 in person with counsel Sh. Manish Batra,
Advocate.

Vide separate judgment, accused No. 1 and accused No. 6
are held guilty for the offence punishable under Section 24(1) r/w Section
27 (2) of SEBI Act.

Renotify the matter for argument on the point of sentence
on 19.10.2012 at 2 PM.


[PAWAN KUMAR JAIN]
ASJ-01/CENTRAL/DELHI
17.10.2012



(111)



SEBI Vs. Oriental Housing Development Finance Corp. Ltd. & Ors.

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

**Complaint Case No. 73 of 2010
ID No: 02401R0227082003**

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 Block No.1. Rajendra Bhavan, Rajendra Place District Centre, New Delhi-110008, represented by Ms. Deepika Jaggi, Manager, SEBI.

VERSUS

1. **Oriental Housing Development Finance Corpn. Ltd.**
a company incorporated under the provisions of Companies Act, 1956 and having its Corporate Office:
at 202-203, Pal Mohan Sadan, Rajendra Place
New Delhi – 110 008

.....Accused No. 1

2. **Sh. Sarjeet Singh,**
S/o Not Known to the complainant,
Occupation: Director of the Accused no.1
R/o C-18, Duggal Estate, Devil Road,
Khanpur Etn. New Delhi-110 062

.....Accused No.2

3. **Sh. N.S. Saini,**
S/o Not Known to the complainant
Occupation Director of the Accused no.1
R/o C-18, Duggal Estate Devil Road,
Khanpur Extn., New Delhi-110 062

.....Accused No.3

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4. **Shri Nanak Singh,**
S/o Not Known to the complainant
Occupation Director of the Accused no. 1
R/o C-18, Duggal Estate, Devil Road,
Khanpur, New Delhi-110 062

.....Accused No.4

5. **Dr. Sukhcharan Singh,**
S/o Not Known to complainant
Occupation Director of the Accused no. 1
R/o 8571, S. George Washington,
Yoba City CA – 95993, USA

.....Accused No. 5

6. **Sh. H.S. Hanspal,**
S/o Sh. Gian Singh
Occupation Director of the Accused no. 1
R/o K 17, Rajouri Garden, New Delhi

.....Accused No. 6

Date of Institution	:	21.01.2003
Date of Committal to Sessions Court	:	07.02.2005
Date of judgment reserved on	:	01.10.2012
Date of pronouncement of judgment	:	17.10.2012

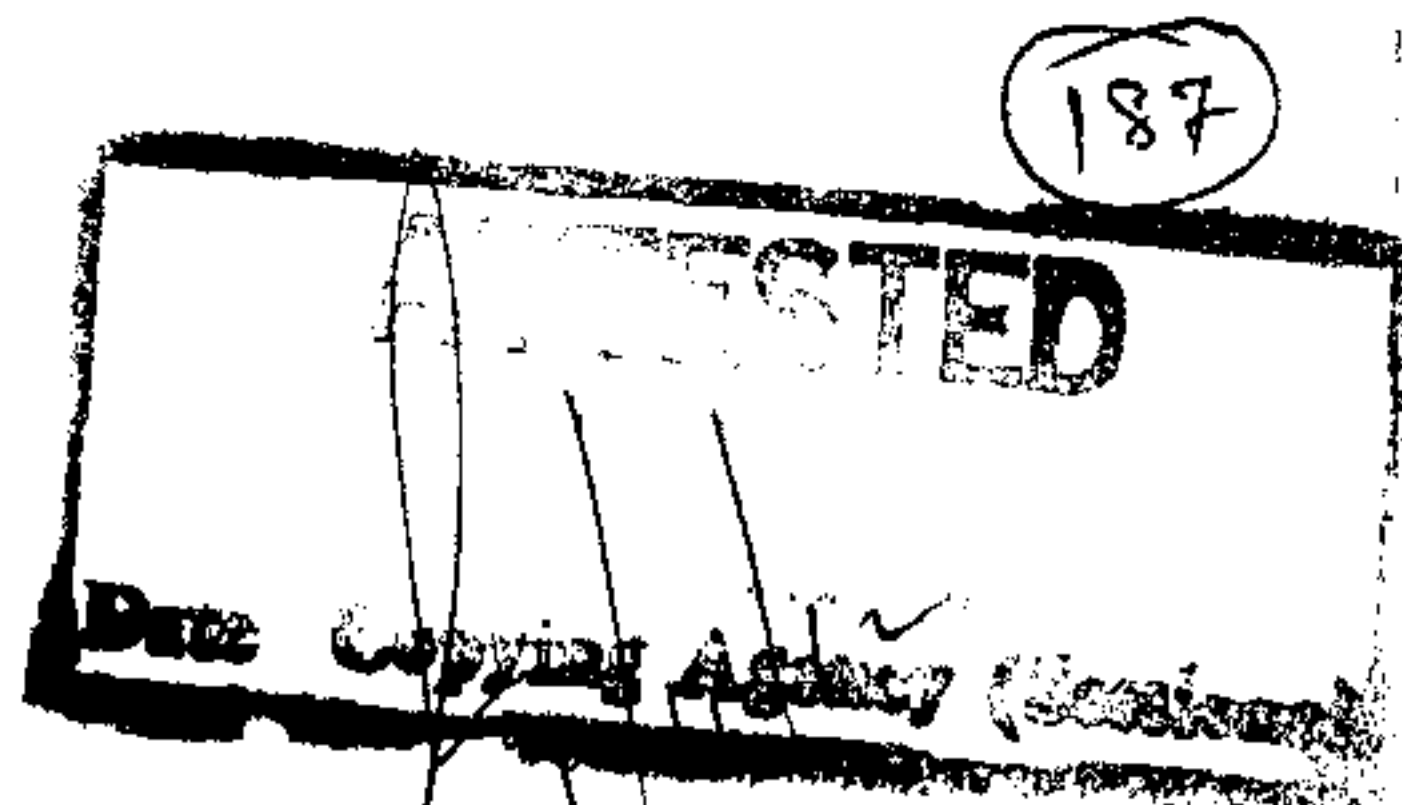
Present : Sh. Sanjay Mann, Advocate, counsel for SEBI
Sh. Manish Batra, Advocate, counsel for accused no.6

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 21, 2003 in the Court of Additional Chief Metropolitan Magistrate (ACMM), alleging violation of the provisions of

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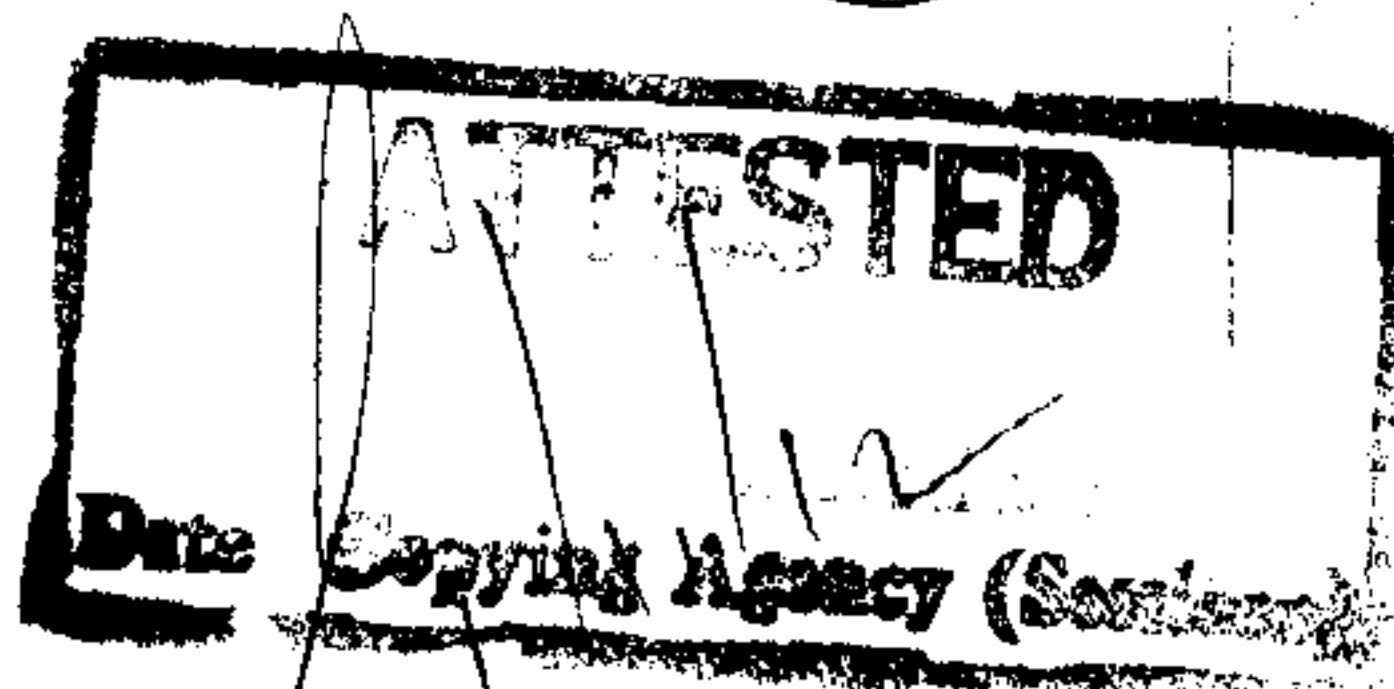
Section 12 (1B) of Securities & Exchange Board of India Act, 1992 (hereinafter, "the SEBI Act") and Regulation Nos. 5(1) read with 68(1), 68(2), 73 and 74 of the Securities & Exchange Board of India (Collective Investment Schemes) Regulations, 1999 (hereinafter referred to as "the CIS Regulations" or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

2. Six persons were arrayed as accused in the criminal complaint preferred under Section 200 Cr.P.C., they being M/s Oriental Housing Development Finance Corporation Ltd. (hereinafter, "A1" or "the Company Accused"), accused No. 2 Sarjeet Singh, ("A2"), accused No.3 Sh. N.S.Saini ("A3"), accused No.4 Sh. Nanak Singh ("A4"), accused No.5 Dr. Sukhcharan Singh ("A5") and accused No.6 Sh. H. S. Hanspal ("A6"). It is alleged that A2 to A6 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 ₹ 0.625 crores 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.

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4. Cognizance on the complaint was taken by the learned ACMM vide order dated January 21, 2003 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 February 7, 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.

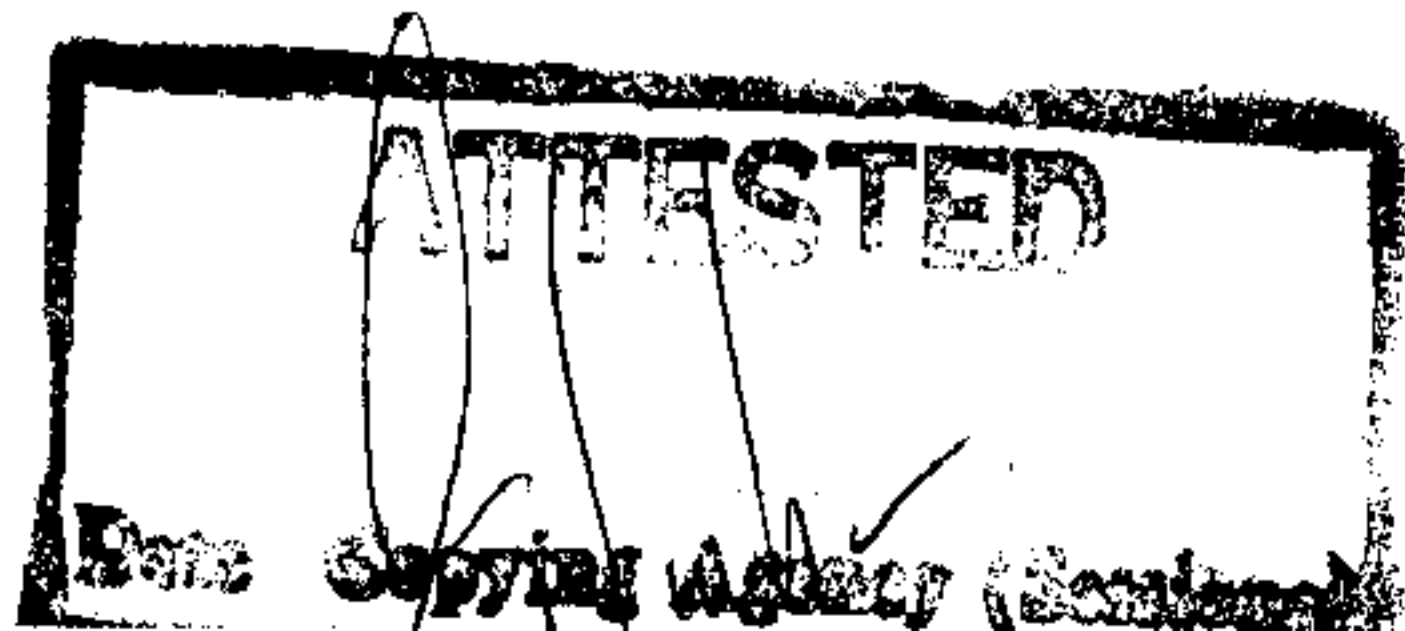
6. Vide order dated April 28, 2006, A2, A3 & A4 were declared proclaimed offenders on account of their non-appearance. Thereafter, vide order dated September 14, 2006, a notice for the offence punishable under Section 24 read with section 27 of the SEBI Act was served upon the A1(company) & A6 wherein A6 pleaded not guilty and claimed trial. Vide order dated February 4, 2011 and May 9, 2011, proceedings qua accused no. 5 were separated due to his non-appearance.

7. To bring home the guilt of accused, complainant has examined two witnesses namely Ms. Deepika Jaggi, Manager, SEBI as CW1 and Ms. Pooja Mirchandani, AGM, SEBI as CW2. Thereafter, A6 H. S. Hanspal was examined under Section 313 Cr.P.C. wherein he submitted that allegations leveled against him are false and SEBI has not filed the criminal complaint through authorized representative. A6 further submitted that he was not a Director in the company accused at any point of time and was not in-charge of day to day affairs of the company accused, therefore, the question of his resignation did not arise. He

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further submitted that he did not know other accused persons. He further submitted that he never signed any form-32. After receiving summons from Court, he tried to trace out the alleged Directors of the company accused. He further submitted that his name had been misused by certain unscrupulous persons for their personal gain without his consent and knowledge. To prove his innocence, A6 has examined Sh. R. K. Saini, Sr. Technical Assistant, ROC as DW1.

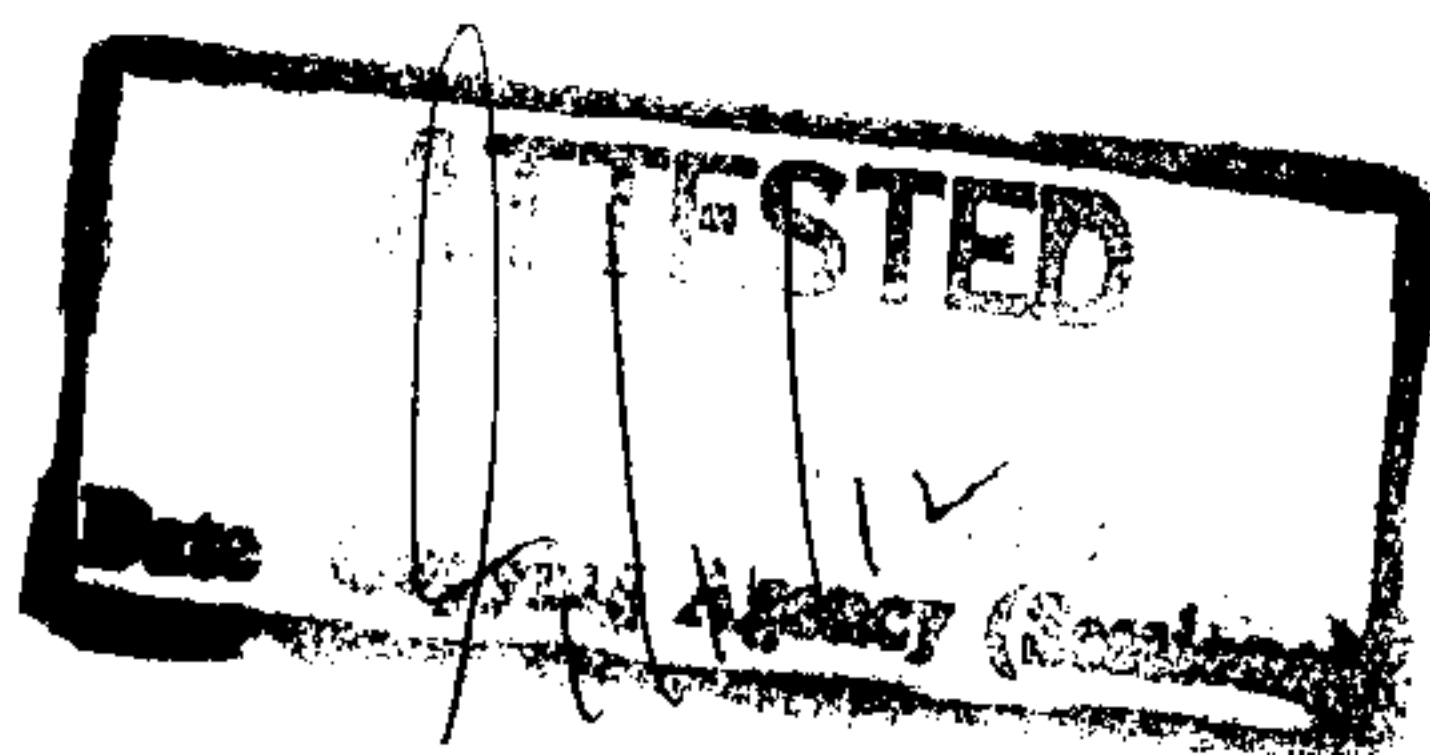
8. Learned counsel appearing for SEBI contended that the company accused was incorporated on January 6, 1987 and during the period 1997-1998, company accused had mobilized funds by launching various Collective Investment schemes. As per letter Ex. CW1/6, company accused had raised funds to the tune of ₹ 62.54 lac. It was submitted that vide letter Ex. CW1/9, company accused intimated the SEBI that company had raised funds to the tune of ₹ 118.96 lac under different schemes. It was contended that since the said amount was generated after insertion of Section 12(1B) and company accused had not obtained mandatory certificate of registration before mobilizing the funds, thus, company accused had violated the provisions of Section 12(1B) of the Act. It was further submitted that CIS Regulations were notified w.e.f October 15, 1999 but company accused failed to comply with the provisions of CIS Regulations and even company accused failed to file the winding up and repayment report, thus, company accused had also violated the CIS Regulations, which are punishable under Section 24(1) of the SEBI Act. It was further submitted that A6 was one of the Directors in the company accused at the time when the funds were mobilized and this fact is proved from the certified copy of Annual Report filed by the company accused before the ROC and same is exhibited as Ex. CW2/2. As per the Annual Report, A6 was director in the company accused w.e.f July 28, 1994 to July 20, 1998. It was submitted that funds

[Signature]

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were mobilized during his tenure, thus he is also liable for the said violations.

9. On the other hand, learned counsel appearing for A6 contended that there is no iota of evidence to show that A6 was one of the Directors in the company accused. It was contended that SEBI has not filed Form-32 to show that A6 was ever inducted as Director in the company accused. It was contended that mere the name of A6 is mentioned in the letters filed by the company accused is not sufficient to establish that he was one of the directors in the company accused. It was further argued that no reliance can be placed on the copy of Annual Report of the company accused as it does not bear the signature of A6.

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 A6, 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. Company accused was incorporated on January 6, 1987 and this fact is also proved from the Memorandum and Articles of Associations of the company accused. Section 12(1B) was inserted in the SEBI Act by way of amendment Act 9 of 1995 w.e.f January 25, 1995. After the insertion of Section 12(1B), 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 obtains a certificate of registration from the Board in accordance with the regulations. It means that w.e.f January 25, 1995, no person could mobilize fund through

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collective investment schemes unless he obtains a certificate of registration from the Board in accordance with regulations.

13. Under proviso to Section 12(1B), some relaxation was provided to certain companies to continue with the existing schemes till the notification of regulations. But said relaxation was applicable only to those companies which were running collective investment schemes on or before January 25, 1995. Admittedly, the company accused was not carrying any collective investment schemes in the year 1995 at the time of insertion of Section 12(1B), thus, company accused was not entitled for the relaxation as provided under proviso to Section 12(1B) of the SEBI Act. Since, company accused had mobilized the funds during the period 1997-1998 without obtaining mandatory certificate of registration under Section 12(1B) of the Act, company accused had violated Section 12(1B) of the Act.

14. Now, question arises as to whether the company accused had mobilized funds through CIS or not?

15. Company accused vide its letter dated December 15, 1997 intimated the SEBI that company accused had mobilized funds through various schemes to the tune of ₹ 62.54 lac. Thus, it becomes clear that till December 15, 1997, company accused had mobilized funds to the tune of ₹ 62.54 lac. Since, company accused had mobilized the said funds without obtaining mandatory certificate of registration as provided under Section 12(1B) of the Act, thus, company accused had violated the mandatory provisions of Section 12(1B) of the Act.

16. Company accused vide its letter dated September 22, 1998 (Ex. CW1/9) intimated the SEBI that company accused had mobilized

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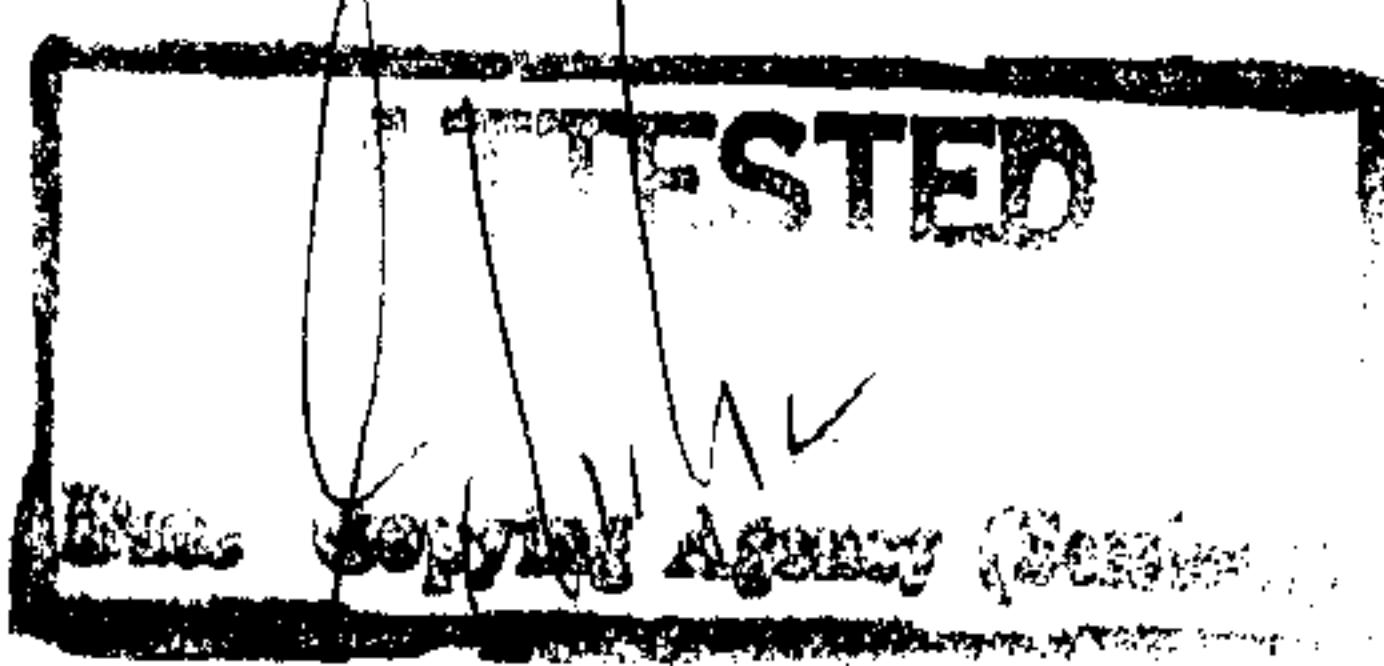
₹ 80.40 lac under the Lump-sum Scheme, ₹ 34.15 lac under the Regular Return Scheme and ₹ 4.41 lac under Flexible Schemes. In other words, company accused under the above schemes had raised funds to the tune of ₹ 118.96 lac. Company accused further intimated the SEBI that company had acquired 78 Bigas of land at Sarai Talfi, Ahatmali Bareilly. Company accused further intimated the SEBI that now company had stopped mobilizing the funds under these schemes in terms of Notification issued by the SEBI. Since company accused had mobilized the said amount after January 25, 1995 without obtaining the mandatory certificate of registration as mentioned under Section 12(1B) of the Act, thus company accused had violated the provisions of Section 12(1B) of the Act.

17. Indisputably, the CIS Regulations were notified w.e.f October 15, 1999. As per the Regulation 5, the companies which were running collective investment schemes prior to the commencement of CIS Regulations, shall make an application to the Board for grant of certificate of registration within a period of two months but company accused failed to make any such application. If the company failed to move an application under the Regulation 5 of CIS Regulations or if application was made but same was rejected, such companies were bound to wind up the schemes in terms of Regulation 73 of CIS Regulations and shall make the payment to the investors and shall submit the winding up and repayment report to the SEBI in terms of Regulation 73 of CIS Regulations. Admittedly, the company accused had not moved any application for seeking registration, thus company accused was bound to refund the amount to the investors and was further bound to submit the winding up and repayment report. But admittedly, company accused had not complied with the provisions of Regulation 73 of CIS Regulations also. Perusal of the testimony of CW1 reveals that SEBI had sent letters to the company accused from time to

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time and same are exhibited as Ex. CW1/14 to CW1/18 and at last Chairman of SEBI had issued the directions on August 14, 2001 and same are exhibited as Ex. CW1/24. Despite that the company accused failed to comply with the directions. Since, company accused failed to comply with the regulations 5 & 73 of CIS Regulations, company accused is liable for the offence punishable under Section 24(1) of SEBI Act.

18. From the aforesaid discussion, I am of the opinion that company accused had not only violated Section 12 (1B) of the Act at the time of mobilizing funds but also violated the CIS Regulations. Violation of Section 12 (1B) and CIS Regulations are punishable under Section 24(1) of the SEBI Act thus company accused is liable for the said violations.

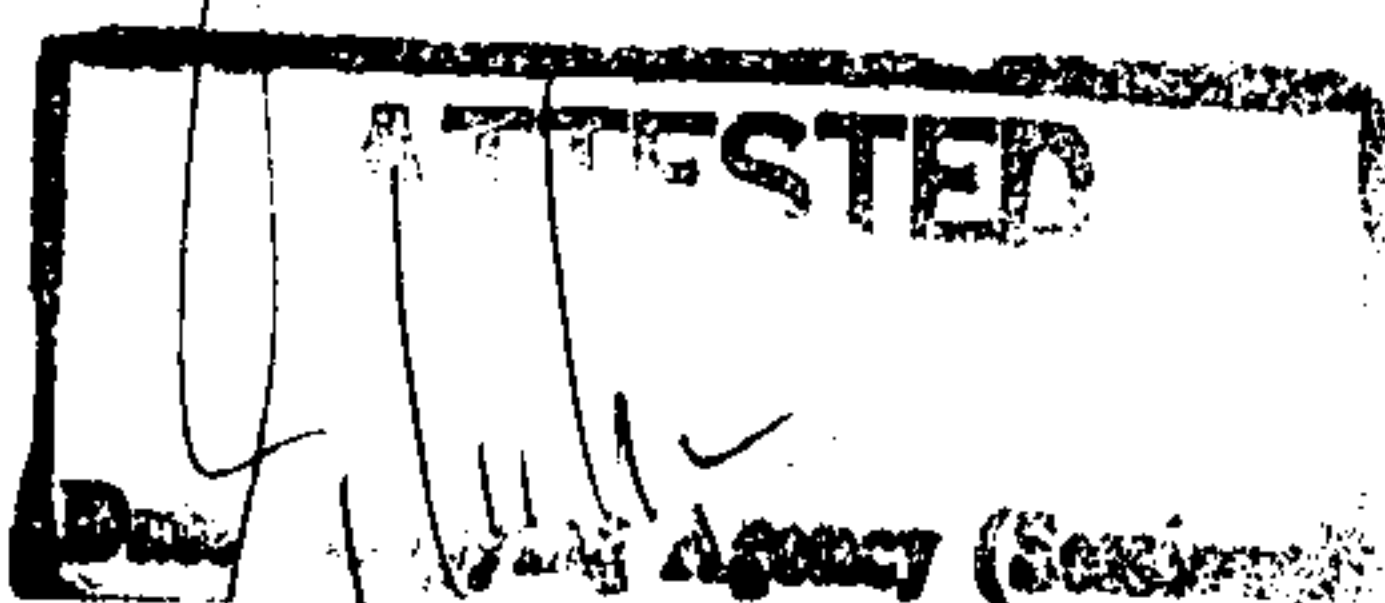
19. Now coming to the contentions as to whether A6 is liable for the aforesaid violations or not?

20. Learned counsel appearing for SEBI contended that company accused had filed the Annual Report before ROC along with the detail of the Directors and as per the said report, A6 was one of the Directors in the company accused and he joined the company accused w.e.f July 28, 1994 and ceased to be Director w.e.f July 20, 1998. It was submitted that Annual Report is a public document under Section 74 of Indian Evidence Act, thus, is admissible in the eyes of law. In support of his contention, he relied upon judgment *Anita Malhotra Vs. Apparel Export Promotion Council & Anrs.*, AIR 2012 SC 31. It was further submitted that the company accused had also sent a letter to the SEBI on May 26, 1998 (Ex. CW1/7) wherein it was recited that A6 was one of the Directors in the company accused. It was contended that since A6 was Director at that time when the above funds were mobilized by the

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company accused in violation of provisions of SEBI Act and CIS Regulations, thus A6 is also liable for the said violations in terms of Section 27 of the SEBI Act.

21. Per contra, learned counsel appearing for A6 contended that there is no iota of evidence to establish that A6 was one of the directors in the company accused. It was submitted that no reliance can be placed on the Annual Report as it does not bear the signature of A6. Similarly, it was contended that no reliance can be placed on the letter Ex. CW1/7 as it does not bear the signature of A6. It was submitted that CW1, in her cross-examination admitted that A6 had never represented himself as a Director before the SEBI, nor he had signed any document on behalf of company accused as a Director.

22. Annual Report is exhibited as Ex. CW2/2. Perusal of the said report reveals that ROC had sent computer record of the company accused stating that the company accused was a defaulter in filing the Annual Reports and Balance-sheet. ROC had sent a copy of available Annual Report to the SEBI and further intimated the SEBI that company accused was registered in two States i.e. Delhi and West Bengal and further advised the SEBI to contact the ROC of West Bengal also.

23. Now, question arises as to whether Annual Report of the company accused is a public document or not?

24. The said question was dealt by the Hon'ble Supreme Court in case *Anita Malhotra (supra)* wherein it was held:-

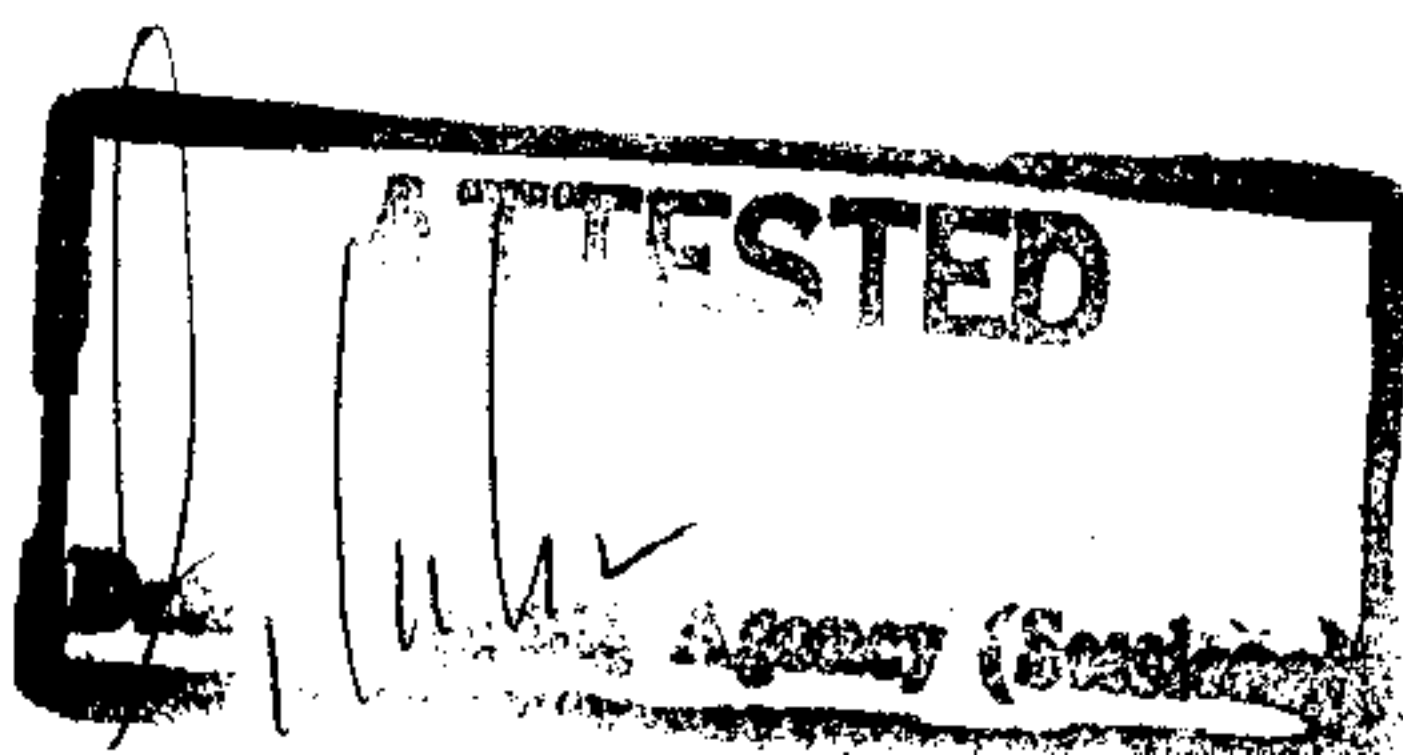
Para: 12:

"Mr. Akhil Sibal by taking us through the relevant provisions of the Companies Act, 1956, particularly, Sections 159, 163 and 610(3) contended that the Annual

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Return dated 30.09.1999 is a public document and the same is reliable and legally acceptable insofar as the contents of the same are concerned. The said Sections are reproduced hereunder:

159. Annual return to be made by company having a share capital. - (1) Every company having a share capital shall within sixty days from the day on which each of the annual general meetings referred to in section 166 is held, prepare and file with the Registrar a return containing the particulars specified in Part I of Schedule V, as they stood on that day, regarding--

- (a) its registered office,
- (b) the register of its members,
- (c) the register of its debenture-holders,
- (d) its shares and debentures,
- (e) its indebtedness,
- (f) its members and debenture-holders, past and present, and
- (g) its directors, managing directors, managers and secretaries, past and present:

Provided that any of the five immediately preceding returns has given as at the date of the annual general meeting with reference to which it was submitted, the full particulars required as to past and present members and the shares held and transferred by them, the return in question may contain only such of the particulars as relate to persons ceasing to be or becoming members since that date and to shares transferred since that date or to changes as compared with that date in the number of shares held by a member.

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163. Place of keeping and inspection of, registers and returns.--

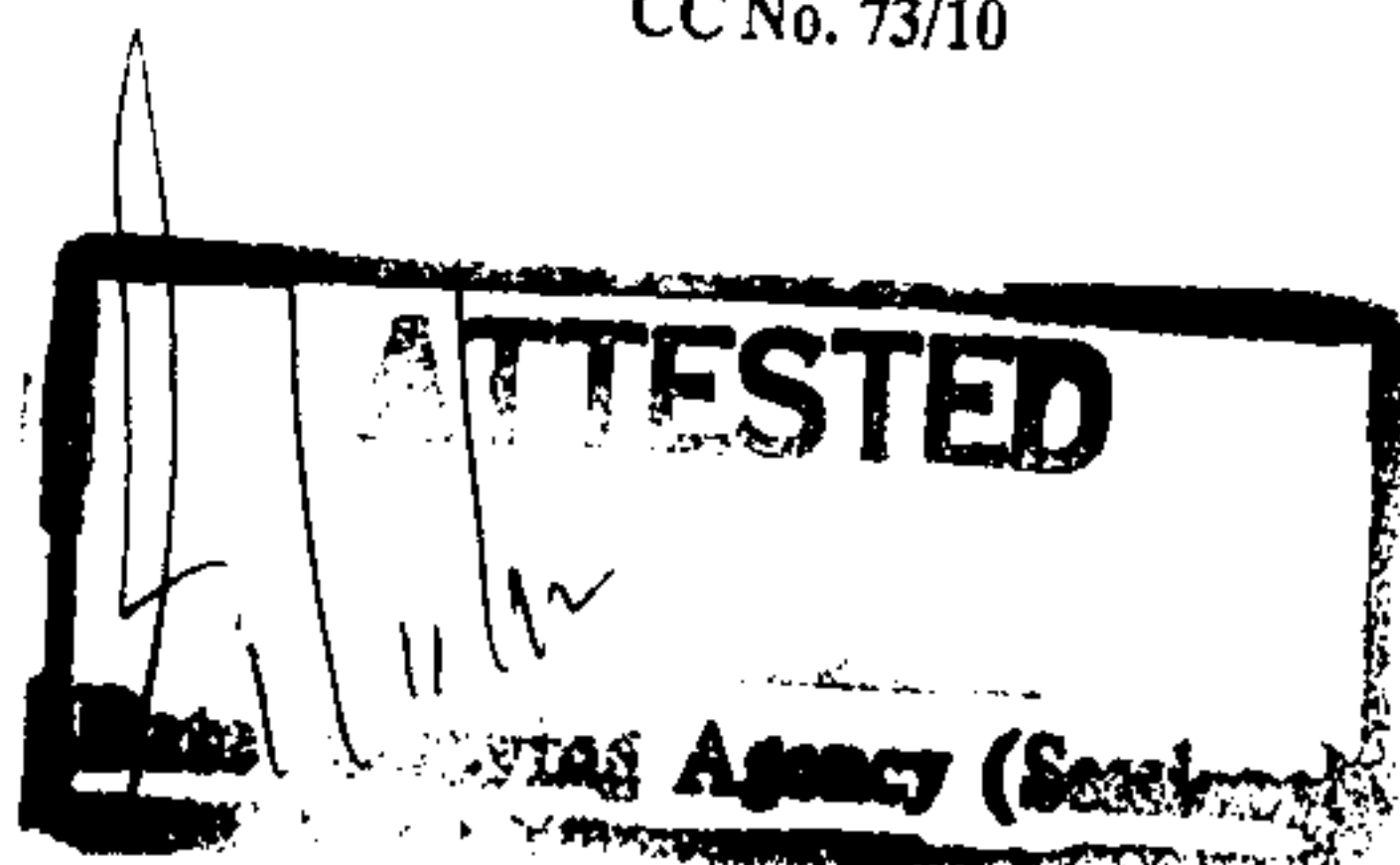
(1) The register of members commencing from the date of the registration of the company, the index of members, the register and index of debenture-holders, and copies of all annual returns prepared under sections 159 and 160, together with the copies of certificates and documents required to be annexed thereto under sections 160 and 161, shall be kept at the registered office of the company:

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25. From the above, it becomes abundantly clear that annual report is a public document as defined under Section 74 of Indian Evidence Act.

26. Now the question arises as to whether SEBI has proved the annual report in accordance with law or not?

27. Section 77 of Indian Evidence Act deals with the manner in which public document is required to be proved and same reads as under:-

Section 77:-

"Proof of documents by production of certified copies. Such certified copies may be produced in proof of the contents of the public documents or parts of the public documents of which they purport to be copies."

28. Section 76 defines the certified copy of public document and same reads as under:-

"Certified copies of public documents: Every public officer having the custody of a public document, which any person has a right to inspect, shall give that person on demand a copy of it on payment of the legal fees therefore, together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof, as the case may be, and such certificate shall be dated and subscribed by such officer with his name and his official title, and shall be sealed, whenever such officer is authorized by law to make use of a seal; and such copies so certified shall be called certified copies."

Explanation.-- Any officer who, by the ordinary course of official duty, is authorized to deliver such

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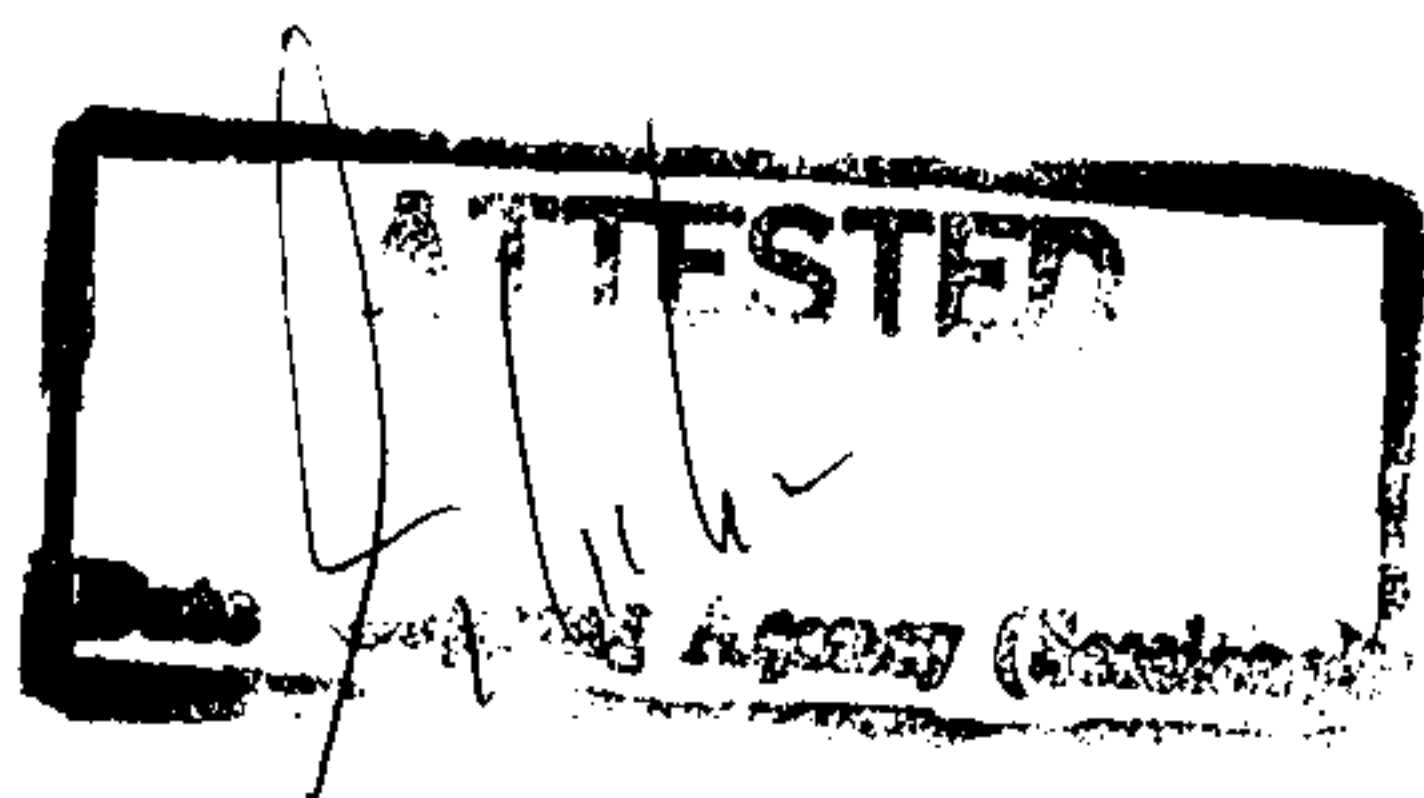
copies, shall be deemed to have the custody of such documents within the meaning of this section."

29. Combined reading of Section 76 & 77 of Indian Evidence Act establishes that a public document can be proved by producing a certified copy of public document. But in the instant case, SEBI has failed to file the certified copy of Annual Report. The Annual Report filed by the SEBI is merely a photostat copy which was sent to the SEBI by the ROC on their request. On the forwarding letter of the said Annual Report, SEBI had put its seal wherein it is mentioned that the contents are not verified. This shows that even SEBI has not verified the contents of the said documents. Similarly, on the forwarding letter of the ROC Ex. CW2/1, SEBI had put the similar seal which shows that the contents had not been verified. Thus, it becomes abundantly clear that Ex. CW2/1 and Ex. CW2/1 are not the certified copies in terms of Section 76 of Indian Evidence Act. Thus, SEBI has failed to prove the said documents in terms of Section 77 of Indian Evidence Act.

30. No doubt, SEBI had failed to prove the Annual Report in terms of Section 76 and 77 of Indian Evidence Act but this deficiency was made up by the A6 himself by examining DW1, who is the Senior Technical Asstt. in ROC. In his examination-in-chief, he deposed that he had brought the complete record of accused company and filed the certified copy of Annual Return of the company for the year ending September 30, 1998 and same is marked Ex. DW1/A. Perusal of Ex. DW1/A reveals that A6 was Director in the company accused w.e.f July 28, 1994 to July 20, 1998. Since, DW1 proved the Annual Report of the company accused, now same can be read in evidence. Since, Annual Report is a public document, Court can place reliance on the contents of the said document. From Ex. DW1/A, it is established that A6 was one of the Directors in the company accused during the period July 28, 1994 to

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July 20, 1998. Moreover, company accused also admitted in its letter May 26, 1998 (Ex. CW1/7) that A6 was one of the Directors in the company accused. No doubt, DW1 in his examination-in-chief deposed that there is no Form-32 in the record of ROC showing that A6 was inducted in the company accused as one of the Directors. But simultaneously, he also deposed that under the Companies Act, company is not bound to send Form-32 as and when a person is inducted as a Director or as and when such person ceased to be Director. He further deposed that as per the Annual Report Ex. DW1/A, A6 H.S. Hans Pal had resigned from the directorship w.e.f July 20, 1998. Thus, it is established beyond the shadow of doubt that A6 was one of the Directors in the company accused during the period July 28, 1994 to July 20, 1998.

31. Now, coming to the point as to whether A6 was liable in terms of Section 27 of the SEBI Act or not?

32. Perusal of the Articles of Association of company accused reveals that only Board of Directors had power to borrow money or to raise funds from the public. It means that individual director was not competent either to borrow money or to raise fund. Since, A6 was one of the Directors, he was member of the Board of Directors. Being the member of the Board of Directors, it was his duty to ensure that company should not have mobilized the fund in violations of provisions of SEBI Act. But he failed to perform his duty. In other words, either he was consented party to the decision of Board of Directors or he was negligent in performing his duty, thus he is liable for the violation committed by the company in terms of Section 27 (2) of the SEBI Act. Since, as per the Annual Return Ex. DW1/A, A6 ceased to be the Director of the company accused w.e.f July 20, 1998, thus he cannot be held liable for the non-compliance of provisions of CIS Regulations, which were notified w.e.f October 15, 1999.

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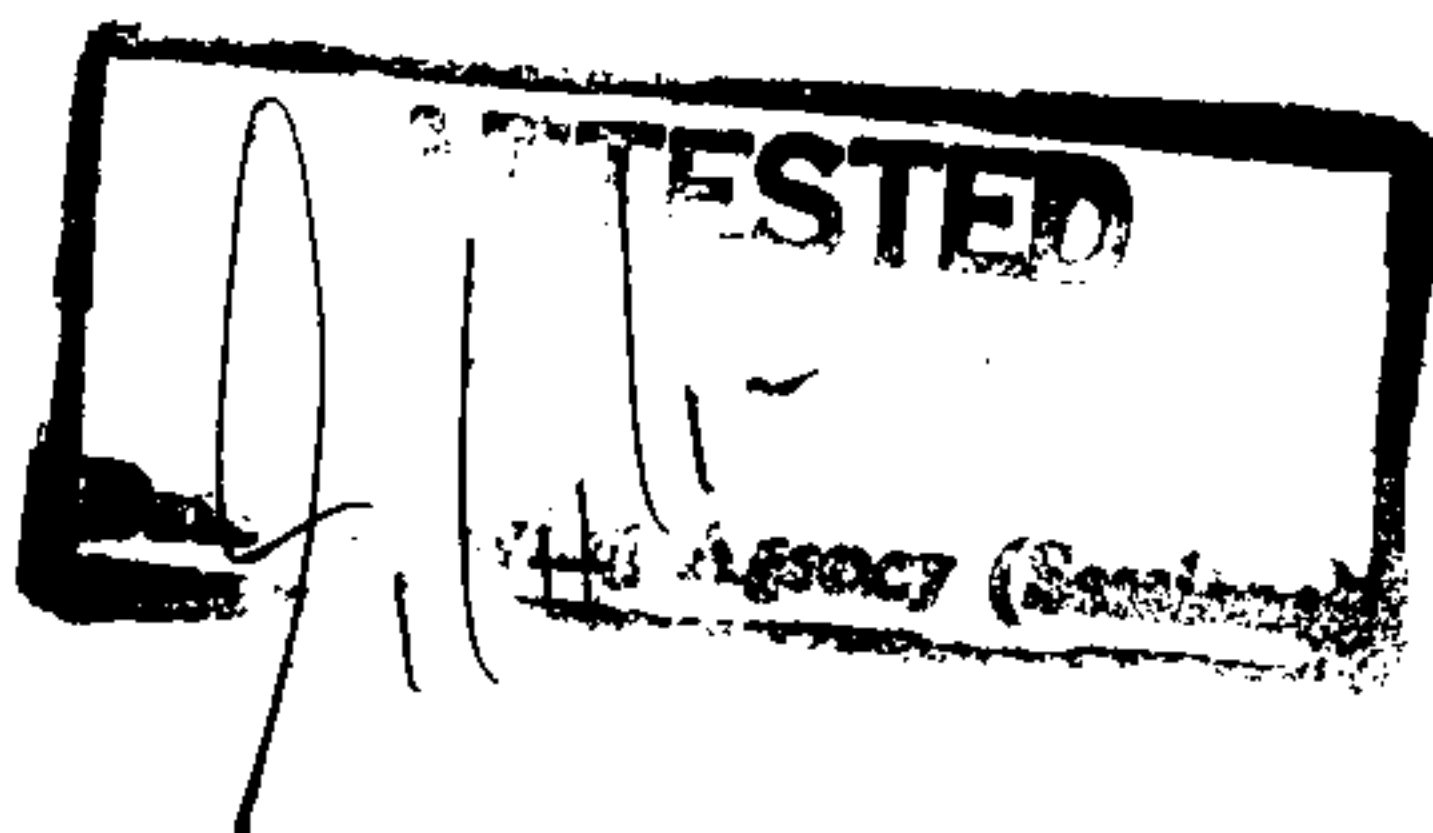
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33. Pondering over the ongoing discussion, I am of the opinion that SEBI has succeeded to establish beyond the shadow of all reasonable doubts that company accused had mobilized funds in violation of Section 12(1B) of the SEBI Act and also violated Regulations 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 A6 Mr. H. S. Hanspal being the Director of company accused is also liable in terms of Section 27 (2) of SEBI Act for the violation of Section 12 (1(1B) of the Act committed by the company accused, thus, I hereby hold the A1 i.e. Oriental Housing Development Finance Corporation Ltd. and A6 Mr. H. S. Hans Pal guilty for the offence punishable under Section 24(1) of SEBI Act read with Section 27 (2) of the SEBI Act.

Announced in the open Court
On this 17th day of October, 2012


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

Copy given to counsel
of the accused for
on 26/10/12
26/10/12





Item No. 10

CC No. 73/10

25.10.2012

Present: Sh. Sanjay Mann, Advocate, counsel for SEBI.
None for Convict no. 1
Convict no. 2 is in person along with counsel Sh. Manish Batra, Advocate.
Accused No. 2, 3 & 4 are PO vide order dated 28.04.2006.
Proceedings qua accused No. 5 has been separated vide order dated 04.02.2011 and 09.05.2011.

Vide separate order on the point of sentence, convict no. 1 & 2 are burdened with a fine of ₹ 5.00 lac each in default convict No. 2 shall undergo simple imprisonment for a period of three months for the offence punishable under Section 24(1) of SEBI Act.

Counsel for SEBI submits that SEBI shall take appropriate steps for realization of fine amount after tracing out the assets of the convict company. Request is allowed.

Fine amount paid on behalf of convict no. 2.

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

Since, A2, A3 & A4 are proclaimed offenders, file be consigned to record room with direction that same be revived as and when they are apprehended.


[PAWAN KUMAR JAIN]
ASJ-01/CENTRAL/DELHI
25.10.2012



(115)



SEBI Vs. Oriental Housing Development Finance Corp. Ltd. & Ors.

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

**Complaint Case No. 73 of 2010
ID No: 02401R0227082003**

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 Block No.1, Rajendra Bhavan, Rajendra Place District Centre, New Delhi-110008, represented by Ms. Deepika Jaggi, Manager, SEBI.

VERSUS

Oriental Housing Development Finance Corpn. Ltd.
a company incorporated under the provisions of
Companies Act, 1956 and having its Corporate
Office at 202-203, Pal Mohan Sadan, Rajendra Place
New Delhi – 110 008

.....Convict no.1

Sh. H.S. Hanspal,
S/o Sh. Gian Singh
Occupation Director of the Accused no. 1
R/o K 17, Rajouri Garden, New Delhi

.....Convict no. 2

**Present : Sh. Sanjay Mann, Advocate, counsel for SEBI
Sh. Manish Batra, Advocate, counsel for convict no. 2**

ORDER ON THE POINT OF SENTENCE:

1. Vide separate judgment dated October 17, 2012, A1
i.e M/s Oriental Housing Development Finance Corpn. Ltd. ("A1") and A6
H. S. Hans Pal have been held guilty for the offence punishable under

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Section 24 (1) read with Section 27 (2) of the SEBI Act.

2. **Learned** counsel appearing for convict no.2 requested to take a lenient view on the grounds that he is respectable member of the Society and has no criminal antecedent. He is 78 years old person. It is further submitted that he had not played any direct role in the functioning of the company accused. Even as per the letter of the complainant Ex. CW1/19, company accused had already refunded the amount to the tune of ₹ 89.22 lac, which shows that the company accused was otherwise interested in refunding the amount to the company accused. It is submitted that it is admitted case of the SEBI that A6 had resigned from the company accused w.e.f July 20, 1998, thus thereafter, A6 had no control over the company accused, thus he was not in a position to comply with the provisions of CIS Regulations.

3. **Per contra** learned counsel appearing for SEBI requested for maximum punishment on the grounds inter-alia that the company accused had mobilized funds to the tune of ₹ 118.96 lac and till date, company accused had not refunded the amount to the investors. It is further submitted that convict is an influence person as he was member of Parliament at the relevant time, thus he can not take plea that he was no aware about his action. It is further submitted that keeping in view the gravity of offence, legislature has enhanced the punishment to the extent of imprisonment for ten years and fine to the tune of rupees twenty five crores.

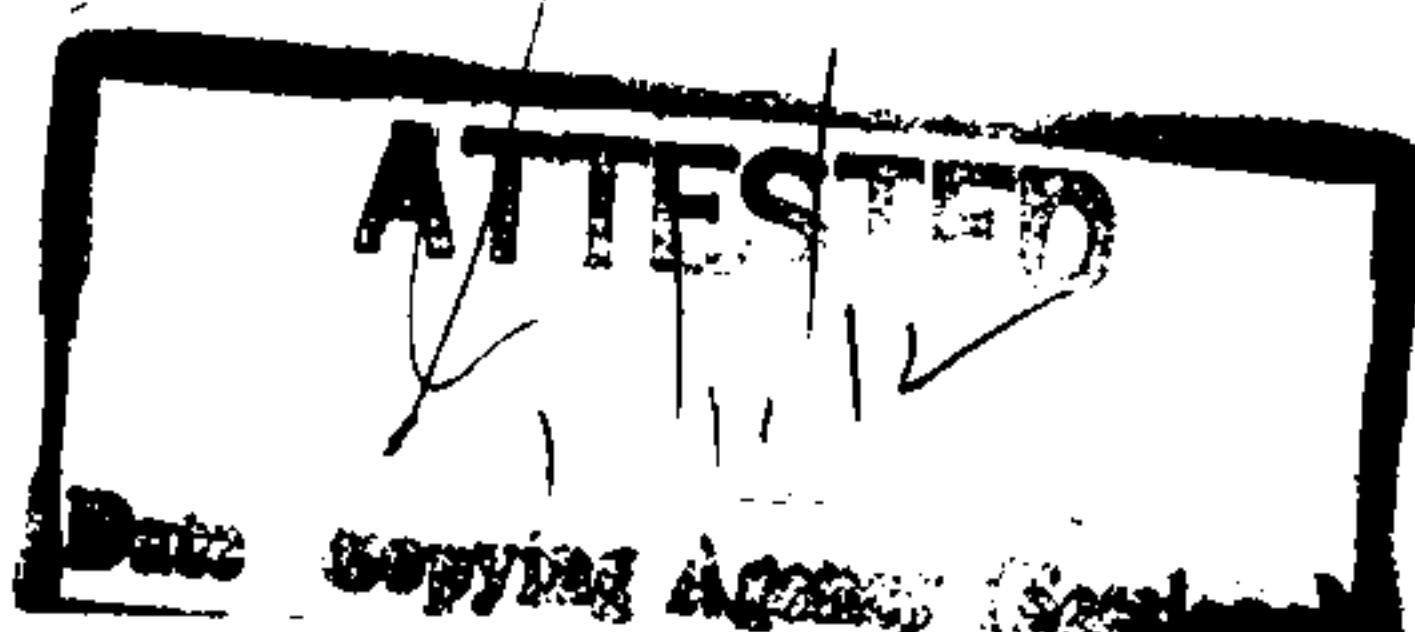
4. I have heard rival submissions advanced by counsel for the parties, perused the record carefully and gave my thoughtful considerations to their contentions.

5. **Indisputably**, the SEBI has relied upon the letter dated

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August 1, 2000, Ex. CW1/19 wherein company accused had categorically stated that company accused had refunded the amount to the tune of ₹ 89.22 lac from the total amount of ₹ 118.96 lac, thus it is admitted case of the SEBI that company accused had refunded the amount to the tune of ₹ 89.22 lac. Hence, the contention of learned counsel for SEBI that company had not refunded any amount to the investors is contrary to the document relied upon by the SEBI. Admittedly, no investor had made any complaint with the SEBI that company had not refunded his amount. It is also admitted case of the SEBI that A6 had ceased to be director of the company accused w.e.f July 20, 1998, it means that thereafter, he had no control over the company accused and since then he was not in a position to comply with the provisions of the SEBI Act. Indisputably, he is an old person of 78 years and has no criminal antecedent. No doubt, legislature has enhanced the punishment qua the offences committed after 29.10.2012 from imprisonment for one year to ten years and also enhanced the fine to the tune of rupees twenty five crores but admittedly, enhanced punishment is not applicable to the present case. Needless to say that in criminal matters, one change in the facts of case can bring sea change in the outcome of the case.

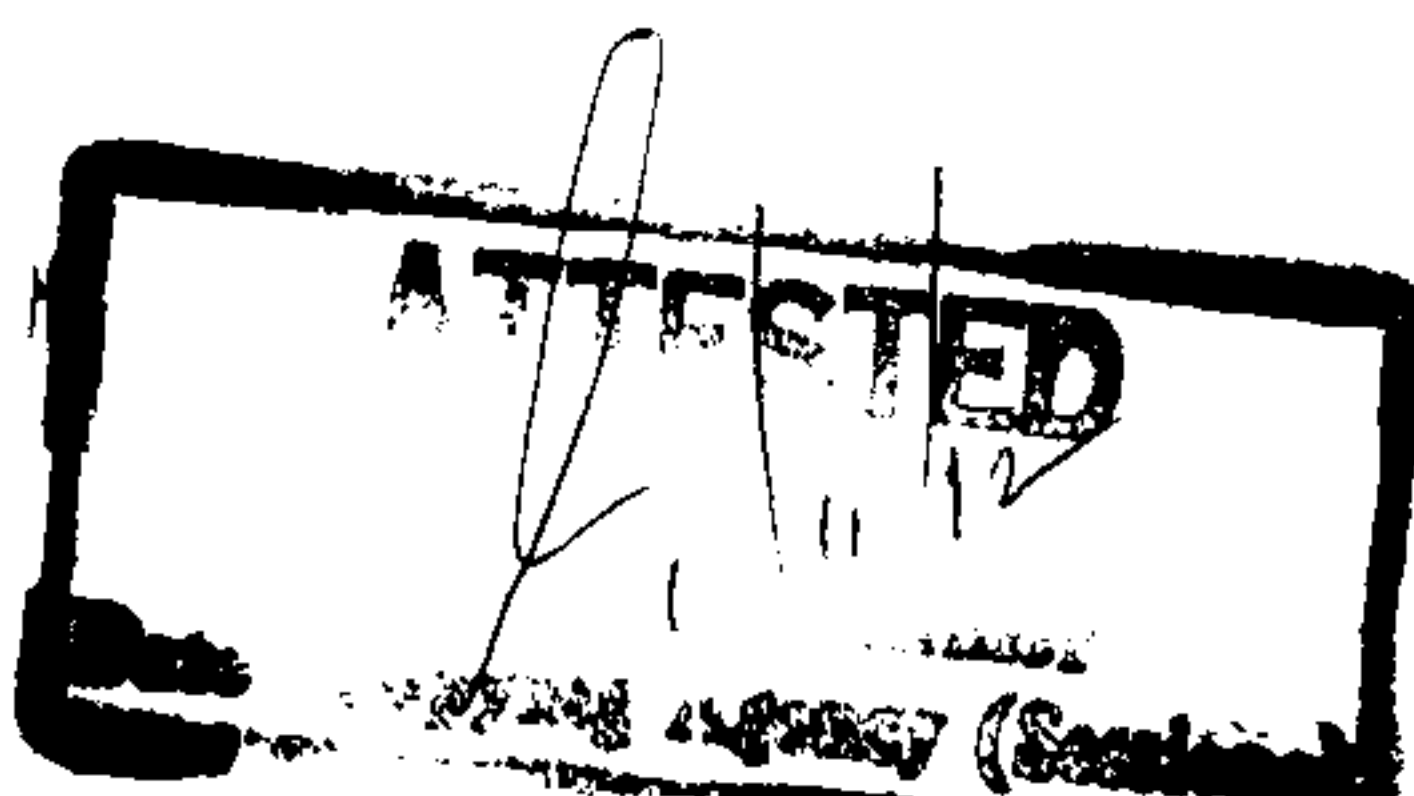
6. Considering the mitigating factors that company accused had refunded the amount to the tune of ₹ 89.22 lac in the year 2000 itself and the fact that convict is an old person having 78 years of age and has no previous criminal antecedents, I am of view that convict deserves a lenient view and ends of justice will be met if he be burdened with substantial amount of fine, thus, I hereby impose a fine of ₹ 5.00 lac each on both the convicts in default convict No. 2 shall undergo simple imprisonment for a period of three months for the offence punishable under Section 24(1) of SEBI Act.

7. Counsel for SEBI submits that SEBI shall take appropriate

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steps for realization of fine amount after tracing out the assets of the convict company. Request is allowed.

8. Fine amount paid on behalf of convict no. 2.

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

9. Since, A2, A3 & A4 are proclaimed offenders, file be consigned to record room with direction that same be revived as and when they are apprehended.

Announced in the open Court
On this 25th day of October, 2012

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

Copy given to Counsel
on the Court act for
on 26/10/12
26/10/12

Office of The District		13
Date.	25/10/12	13
By	Examiner	13