

IN THE COURT OF ADDITIONAL CHIEF METROPOLITAN
MAGISTRATE, DELHI

CC NO: 1200 OF 2003
16N403

0240120239782003

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 Asst. General Manager,
Rakesh Bhanot.

...Complainant

VERSUS.

- ✓1. Pioneer Forests India Ltd. Company
Incorporated Under the Companies
Act, 1956, having its Regd. Office at:
Fatehgarh Road, Distt. Hosiarpur,
Punjab.
- ✓2. Shri Balwinder Singh, s/o Shri Nagenal
Singh, Director of Accused No.1, R/o:
Village Khanoor, Post Office Jallowal,
Distt. Hosiarpur, Punjab.
- ✓3. Shri Kulwinder Singh S/o Shri Kartar
Singh, Director of accused No.1, R/o:
Village & PO Kakkon, Distt. Hosiarpur,
Punjab.

13/09/07

51119/2012

26/01/11
JLA (PT 1 84)
27/2
JLA (Ratan)

332

64 95

ATTESTED
Date of filing Agency (Sessions)



✓4. Shri Gurudev Singh Saini S/o Shri
S. Swaran Singh. Director of
accused No.1, R/a: Near Railway
Crossing, Phagwara Road,Accused
Hosiarpur, Punjab.

✓5. S. Surinder Singh S/o S Baldev
Singh. Director of accused No.1,
R/a: Village Bassi Jaura P.O. Bassi
Kalan, Dist Hosiarpur, Punjab..

h
P.O. P.O.
26.07.07

✓6. Shri Manjit Singh S/o S Santokh
Singh. Director of accused No.1,
R/a: Village & PO Chabberwal, Dist
Hosiarpur, Punjab.

h
P.O. P.O.
26.07.07

7. Shri Hardyal Singh S/o S Ujjagar
Singh. Director of accused No.1,
R/a: Village & PO Wahid, The.
Phagwara, Dist Kapurthala, Punjab.


8. Shri Ajay Kumar Sharma S/o Sh.
Khushee Ram Sharma. Director of
accused No.1, R/a: 45/154, Jarnail
Singh Building, GT Road
Phagwara, Dist Kapurthala, Punjab.

9. Shri Jatinder Singh S/o S Surinder
Singh, Director of Accused No.1,
C/o Pioneer Forests India Ltd. R/a :
Fatehgarh Road, Dist. Hosiarpur,
Punjab

h
Fresh Addl - 26/9/17

h
No-233, Bhagat Singh
Phagwara Road, Hosiarpur

ATTESTED

Examiner 

Date Copping Agency (Sessions) 21/7/17



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

ATTESTED
21/9/19
Examiner
Date Copying Agency (Sessions)



Item No. 10

CC No. 67/10

16.07.2012

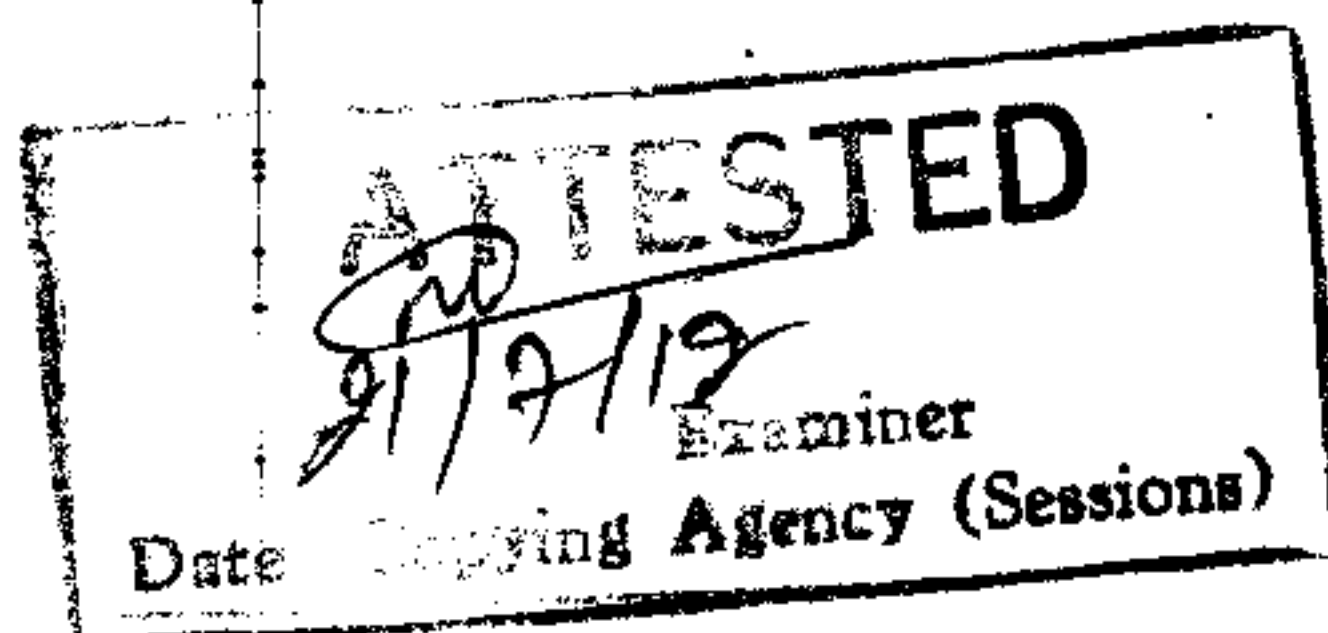
Present: Sh. Sanjay Mann, Advocate, counsel for SEBI.
Accused No. 2, 3, 4, 7 & 8 are in person with counsel Sh. Anish Bhola, Advocate.
Accused No.1 is a company and has already been deleted vide order dated 13.09.2007.
Accused No. 5 & 6 are PO vide order dated 26.09.2007.
Accused No. 9 is PO vide order dated 26.09.2011.

Vide separate judgment. Accused No. 2 and 3 are held guilty for the offence punishable under Section 24 (1) r/w Section 27 (1) and 27 (2) of SEBI Act whereas accused No. 4, 7 and 8 are held guilty for the offence punishable under Section 24 (1) r/w 27 (2) SEBI Act.

Renotify the matter for order on the point of sentence on

18.07.2012.


[PAWAN KUMAR JAIN]
ASJ-01/CENTRAL/DELHI
16.07.2012



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SEBI Vs. Pioneer Forest India & others

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

Complaint Case No.67 of 2010
ID No: 02401R0239782003

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 Asst. General Manager, Rakesh Banot.

Versus

1. **PIONEER FORESTS INDIA LTD.**
Incorporated Under the Companies Act
having its Regd. Office at:
Fatehgarh Road, Distt. Hosiarpur,
Punjab.

.....Accused no.1

2. **Sh. Balwinder Singh**
Director of accused no. 1
S/o Sh. Nagenal Singh
R/o 247, Village Khanoor,
Post Office Jallowal,
Distt. Hosiarpur, Punjab

.....Accused no.2

3. **Sh. Kulwinder Singh**
Director of accused no. 1
S/o Sh. Kartar Singh
R/o Village & PO Kakkon,
Distt. Hosiarpur, Punjab

.....Accused no.3

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4. **Sh. Gurudev Singh Saini**
Director of accused no. 1
S/o Sh. S. Swaran Singh,
R/o Near Railway Crossing,
Phagwara Road, Hosiarpur,
Punjab
5. **S. Surinder Singh**
Director of accused no. 1
S/o S. Baldev Singh
R/o Village Bassi Jaura PO Bassi
Kalan, Distt. Hosiarpur, Punjab
6. **Sh. Manjit Singh**
Director of accused no. 1
S/o S Santokh Singh
R/o Village & PO Chabberwal,
Hosiarpur, Punjab
7. **Sh. Hardyal Singh**
Director of accused no. 1
S/o S Ujjagar Singh
R/o Village & PO Wahid,
The Phagwara, Distt. Kapurthala,
Punjab
8. **Sh. Ajay Kumar Sharma**
Director of accused no. 1
S/o Sh. Khushee Ram Sharma
R/o 45/154, Jarnail Singh Building,
GT Road Phagwara, Distt. Kapurthala,
Punjab

.....Accused no.4

.....Accused no.5

.....Accused no.6

.....Accused no.7

.....Accused no.8

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9. **Sh. Jatinder Singh**
Director of accused no. 1
S/o S Surinder Singh
C/o Pioneer Forests India Ltd
R/o Fatehgarh Road, District Hosiarpur,
Punjab

.....Accused no.9

Date of Institution : 16.12.2003
Date of committal to Session Court : 19.03.2005
Date of judgment reserved on : 03.07.2012
Date of pronouncement of judgment : 16.07.2012

Present: **Sh. Sanjay Mann, Advocate, Counsel for SEBI.**
Sh. Anish Bhola, Advocate, counsel for accused no.
2, 3, 4, 7 & 8

JUDGMENT:

1. This criminal complaint was preferred by the Securities & Exchange Board of India (hereinafter referred to as "SEBI" or "the complainant"), on December 16, 2003 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.

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2. Nine persons were arrayed as accused in the criminal complaint preferred under Section 200 Cr.P.C., they being Pioneer Forests India Ltd. (hereinafter, "A1" or "the Company Accused"), accused No. 2 Sh. Balwinder Singh ("A2"), accused No.3 Sh. Kulwinder Singh ("A3"), accused No.4 Sh. Gurudev Singh Saini ("A4"), accused No.5 Sh. S. Surinder Singh ("A5"), accused No.6 Sh. Manjit Singh ("A6"), accused No.7 Sh. Hardyal Singh ("A7"), accused No.8 Sh. Ajay Kumar Sharma ("A8") and accused No.9 Sh. Jatinder Singh ("A9") 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 ₹ 22.3 lac 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 Schemes registered with SEBI or to wind up the said schemes 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 December 16, 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.


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November 24, 2002, pursuant to Administrative Directions of Hon'ble High Court, under orders of the Ld. District & Sessions Judge, this case was transferred on March 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 August 31, 2006, a notice for the offence punishable under Section 24 read with section 27 of the SEBI Act was served upon the A1(company) & A2 to A9 except A5 & A6 (who were not appearing during trial) wherein all accused persons pleaded not guilty and claimed trial. Vide order dated July 26, 2007, A5 & A6 were declared proclaimed offenders on account of their non-appearance. Vide order dated September 13, 2007, company accused had been deleted from the array of accused. Vide order dated September 26, 2011, A9 was also declared proclaimed offender on account of his non-appearance.

7. In order to bring home the guilt of accused, complainant has examined two witnesses i.e. CW1 Sh. Rakesh Bhanot, DGM, SEBI and CW2 Sh. Arvind Kumar, AGM, SEBI. Thereafter, A2, A3, A4, A7 and A8 were examined under Section 313 Cr.P.C. wherein they took the plea that they were not responsible for day to day affairs of the company accused as they were not involved in the management of the company. They further submitted that Ms. Gurdev Kaur Saini was the Managing Director of the company accused, thus was liable for day to day affairs of the company accused. In order to prove their innocence, accused persons examined following witnesses:-

DW1 Sh. Kulwinder Singh (A3 himself)
DW2 Sh. Gurudev Singh Saini (A4 himself)


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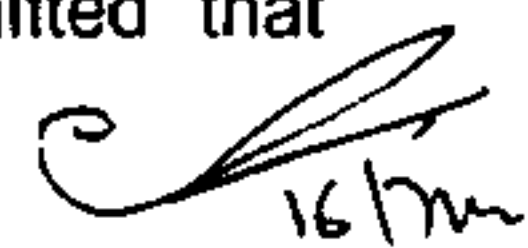
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DW3 Sh. Hardayal Singh (A7 himself)
DW4 Sh. Ajay Kumar Sharma (A8 himself)
DW5 Sh. Balwinder Singh (A2 himself)

8. **Learned** counsel appearing for accused persons vigorously contended that SEBI has failed to bring home the guilt of accused persons as SEBI has failed to prove the CIS Regulations during the trial as SEBI had not filed the notification of the said Regulations. It was submitted that since SEBI has failed to establish the Notification of CIS Regulations, question of its violation does not arise. In support of his contention learned counsel has relied upon the judgment title *Janu Khan & Anr. Vs. State AIR 1960 Patna 213, Jai Gopal Singh & Others vs. Divisional Forest officer, AIR 1953 Patna 310 and Ram Parsad Moral & Anr vs. Emperor AIR (32) 1945 Patna 210.*

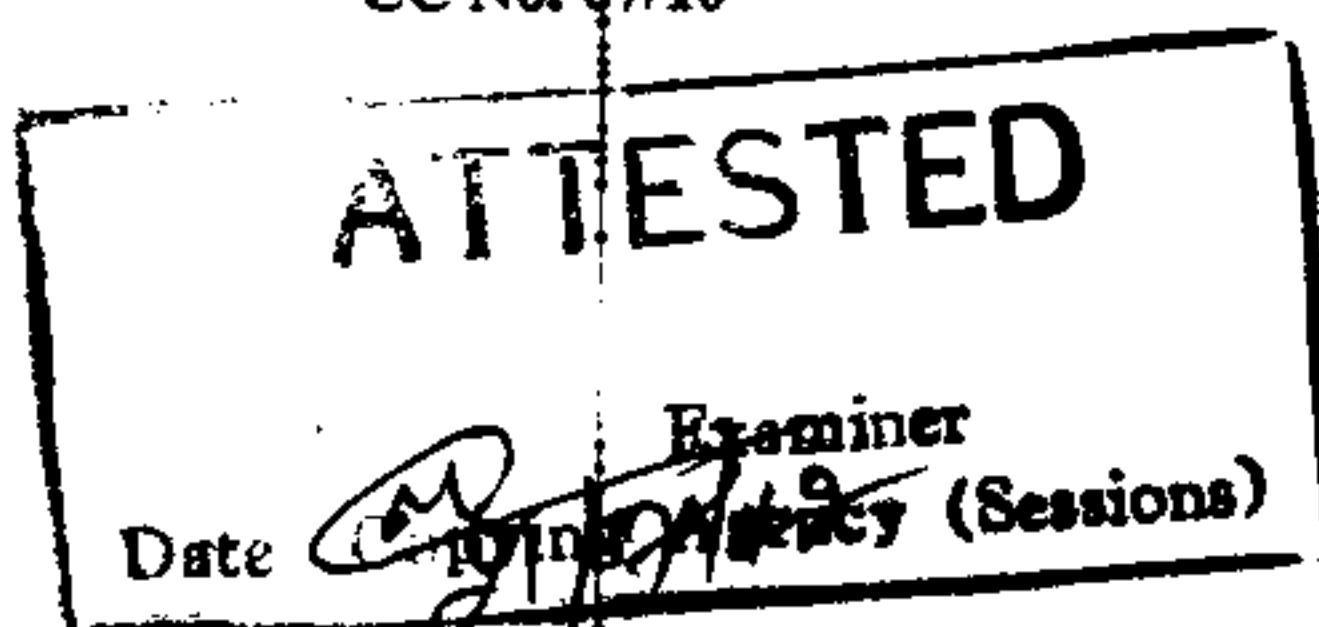
9. **Per contra** learned counsel appearing for SEBI, countered the said contention by arguing sagaciously that CIS Regulations were notified in the gazette on October 15, 1999 and same were approved by the Parliament. It was submitted that mere fact that the SEBI has not filed the Notification is not sufficient to hold that the said Regulations were not notified by the Govt. of India.

10. **Learned** counsel appearing for the accused persons vehemently contended that there is no evidence on record to show that accused persons were liable for day to day affairs of the company accused. It was submitted that accused persons in their deposition categorically deposed that they were not in-charge of and responsible to conduct the business of company accused and SEBI has failed to produce any evidence contrary to this. Thus, it was submitted that


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vicarious liability cannot be imposed upon the accused persons in the absence of any cogent evidence. In support of his contention, he relied upon the judgment **Rashima Verma vs. SEBI 157 (2009) DLT, 417.**

11. **Per** contra, learned counsel appearing for SEBI contended that company accused was incorporated on July 11, 1995 and started its business w.e.f July 21, 1995. It was submitted since company accused was incorporated after January 25, 1995, in terms of Section 12 (1B) of the Act, company accused was not supposed to mobilize funds unless obtained a mandatory certificate of registration. It was submitted that in violation of Section 12(1B) of the Act, company accused had mobilized funds to the tune of ₹ 1, 87, 48, 872/-. It was further submitted that at the time of mobilizing the funds in violation of Section 12(1B) of the Act, A2 to A9 were the directors in the company accused, thus were in-charge of and responsible to, for raising the said funds. It was further submitted that company accused even continued to raise funds after March 31, 1998 and list of investors is exhibited as Ex. CW1/13. It was further submitted that company accused had even mobilized funds in the year 2000. It was further argued that SEBI had sent notice to all the accused persons, despite that accused persons failed to file the winding up and repayment report in compliance of regulations of CIS Regulations. It was further urged that the deposition of defence witnesses proves that the accused persons were actively involved in mobilizing funds.

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





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13. **First** of all, I prefer to deal with the contentions relating to Notification whereby CIS Regulations (SEBI), 1999 were notified.

14. **Learned** counsel appearing for accused persons astutely contended that since SEBI has failed to prove the Notification dated October 15, 1999 whereby CIS Regulations were notified, no conviction can be held for the violation of regulations of the said Regulations. I have perused the judgments cited by learned defence counsel in support of his contentions. The judgment *Janu Khan & others (supra)* and *Jai Gopal Singh & others (supra)* pertain to *Forest Act (1927)* and *Bihar Private Forests Act (9 of 1947)* respectively. In both the cases, pursuant to provisions of the Act, notification was issued, however during trial prosecution failed to prove the said notification. Accordingly benefit of the said lapse was given to the accused. Under the Forest Act 1927, notification was issued under Section 30 of the Act, same reads as under:-

Section 30:-

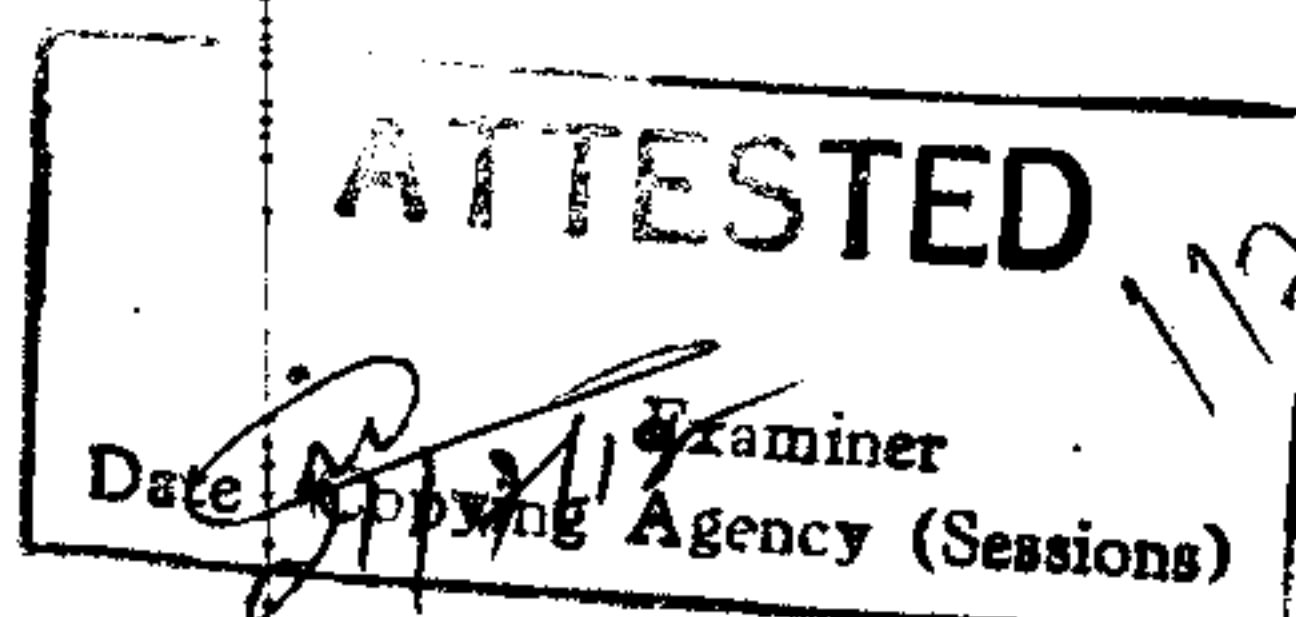
"Power to issue notification reserving trees etc- The State Government may, by notification in the Official Gazette,--

- a) declare any trees or class of trees in a protected forest to be reserved from a date fixed by the notification;
- b) declare that any portion of such forest specified in the notification shall be closed for such term, not exceeding thirty years, as the State Government thinks fit, and that the rights of private persons, if any, over such portion shall be suspended during such term,

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provided that the remainder of such forest be sufficient, and in a locality reasonably convenient, for the due exercise of the rights suspended in the portion so closed; or

- c) *prohibit, from a date fixed as aforesaid, the quarrying of stone, or the burning of lime or charcoal, or the collection or subjection to any manufacturing process, or removal of, any forest-produce in any such forest, and the breaking up or clearing for cultivation, for building, for herding cattle or for any other purpose, of any land in any such forest.*

(emphasis supplied)

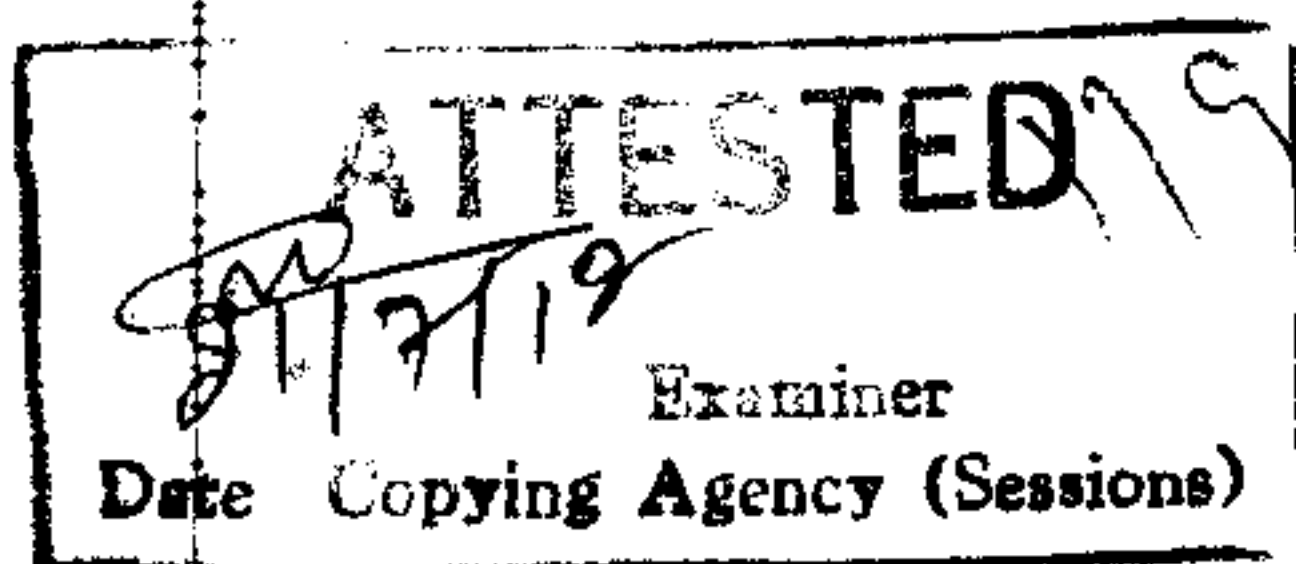
In Bihar Private Forests Act 1947, Section 5 empowers the State Government to issue notification, same reads as under:-

5. Power to prohibit the cutting of trees for purposes of fencing or fuel: The State Government may, by notification and subject to such conditions as may be prescribed, prohibit, either generally or in any local areas, the cutting of any trees or species of trees in any forest for the purpose of fencing or fuel.

(emphasis supplied)

15. Perusal of both the above sections reveals that issuance of notification is an act of Executive and there was no check of the legislature on the action of the Executive. Whereas under the SEBI Act, Section 30 empowers the Board to make Regulations consistent with the Act and rules made thereunder to carry out the purposes of the Act by way of Notification. The relevant portion of Section 30 is reproduced as

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under:-

Section 30: Power to make regulations:-

(1) The Board may, [***] by notification, make regulations consistent with this Act and the rules made thereunder to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:-

(a).....

(b)

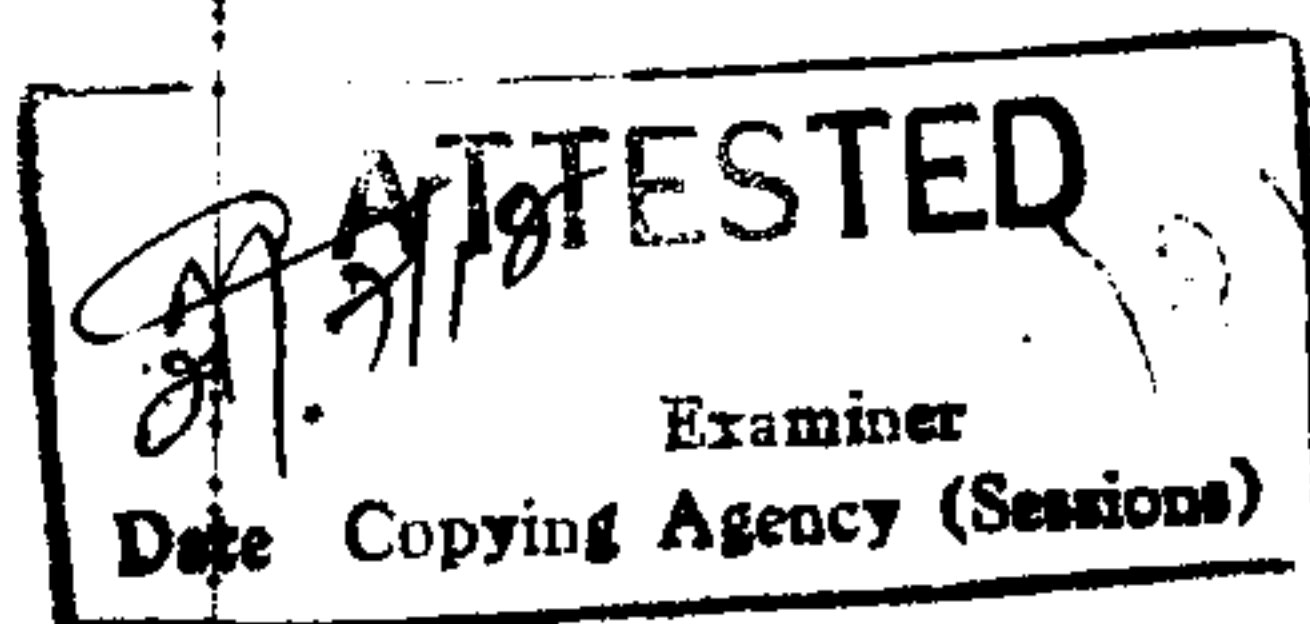
(c) the matters relating to issue of capital, transfer of securities and other matters incidental thereto and the manner in which such matters shall be disclosed by the companies under section 11A;

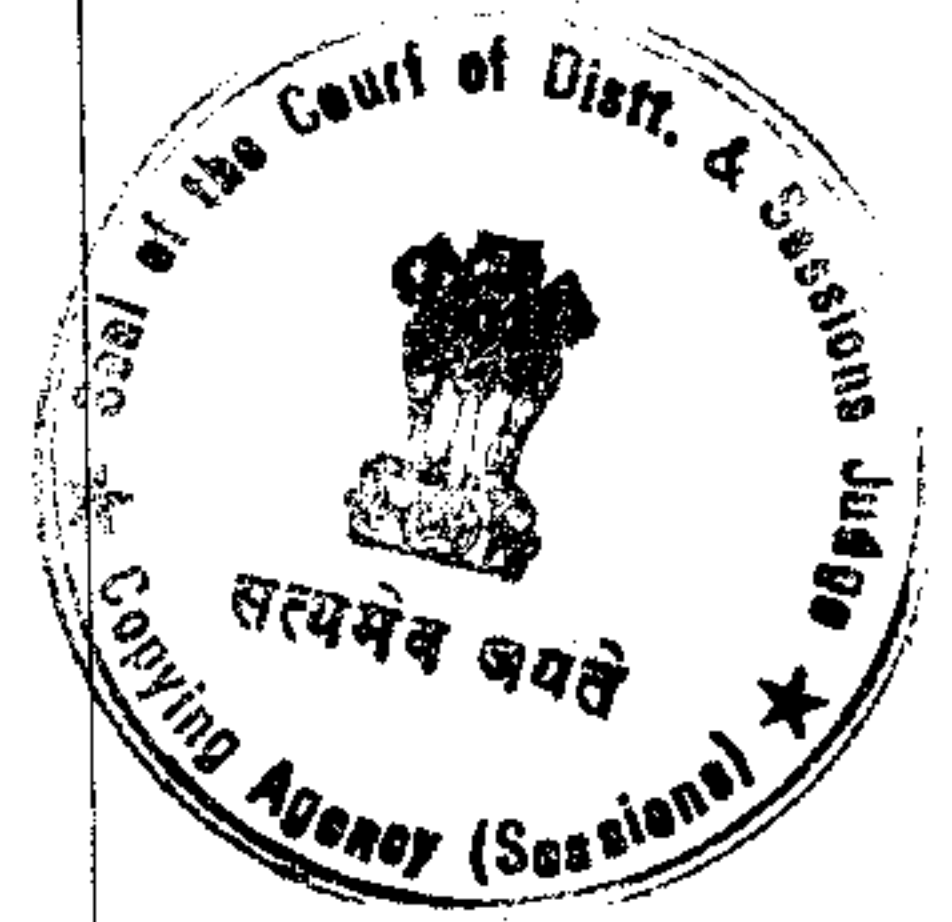
(d).....

Regulations framed under Section 30 of the Act need the approval of Parliament under Section 31 of the Act and same reads as under:

31. Rules and regulations to be laid before Parliament: Every rule and every regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session,

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for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.

16. **Combined** reading of both the Sections make it abundantly clear that the Act has not given unbridled power to the Board to make Regulations. Rather the rules and regulations framed by the Board are required the approval of both Houses of Parliament. Thus, the framing of regulations is not an act of Executive as in the cases relied upon by learned defence counsel but in fact the act of the highest legislative body of the country i.e. Parliament. In the instant case Collective Investment Schemes Regulations (SEBI), 1999 were framed in compliance of Section 30 & 31 of the Act, thus the status of the said Regulation is equivalent to an enactment made by the Parliament. The said Regulations were notified on October 15, 1999. Needless to say every enactment is required to be notified for the enforcement as well as awareness. Mere fact that during trial, SEBI had not filed the notification whereby the said Regulations were notified is not sufficient to hold that the said Regulations cannot be read as contended by learned defence counsel. Moreover during trial, learned defence counsel has not raised any finger

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either over the competency of the Board to frame Regulations or the legality or validity of the said Regulations.

17. Case titled *Ram Prasad Moral (supra)* cited by learned defence counsel is not applicable in the facts and circumstances of the case as in the said judgment prosecution was launched on the basis of unsigned order of District Magistrate, since the said order was not proved during the trial in accordance with law, Court did not place any reliance over the said piece of paper.

18. Considering the above discussion, I am of the view that the contention raised by the learned defence counsel is devoid of merits.

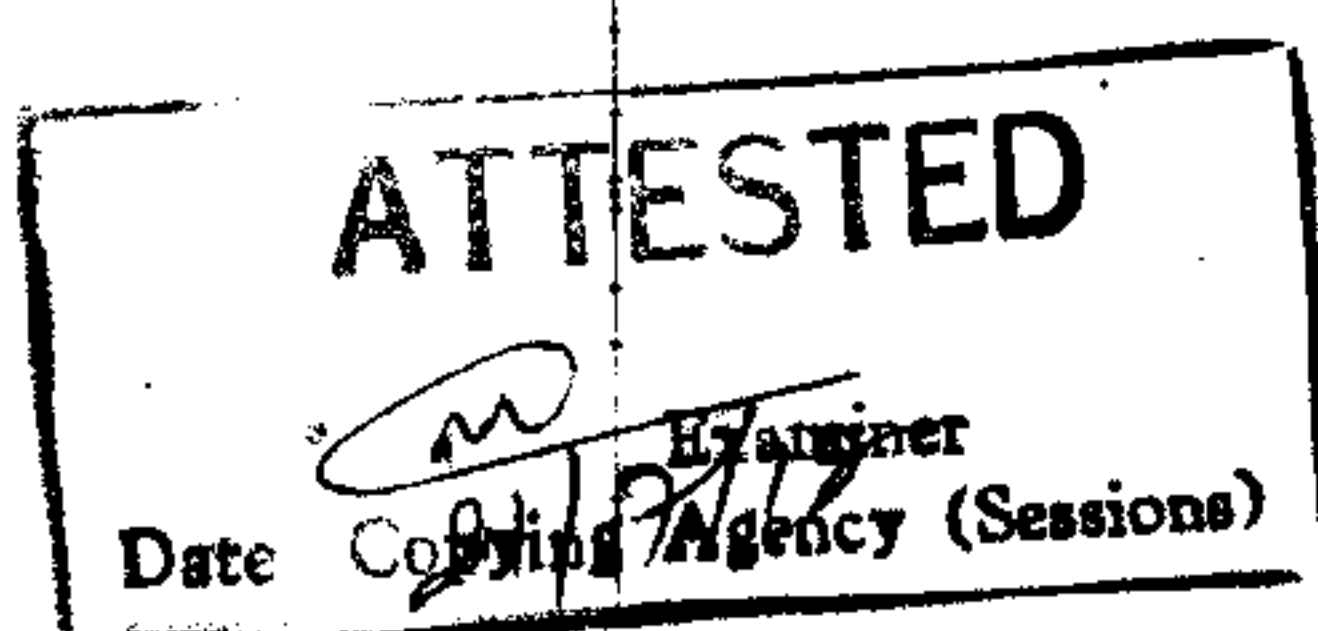
19. Before dealing with the contentions as to whether all accused persons are liable for the violations committed by the company accused, I prefer to deal with the issue as to whether company accused had committed any violation of the provisions of SEBI Act at the time of mobilizing funds or not.

20. Section 12(1B) was inserted in the Act by way of amendment (Act of 1995) w.e.f January 25, 1995. Relevant portion reads as under:

Section 12 (1B):

"No person shall sponsor or cause to be sponsored or carry on or cause to be carried on any venture capital funds or collective investment scheme including mutual funds, unless he obtains a certificate of registration from the Board in accordance with the regulations;

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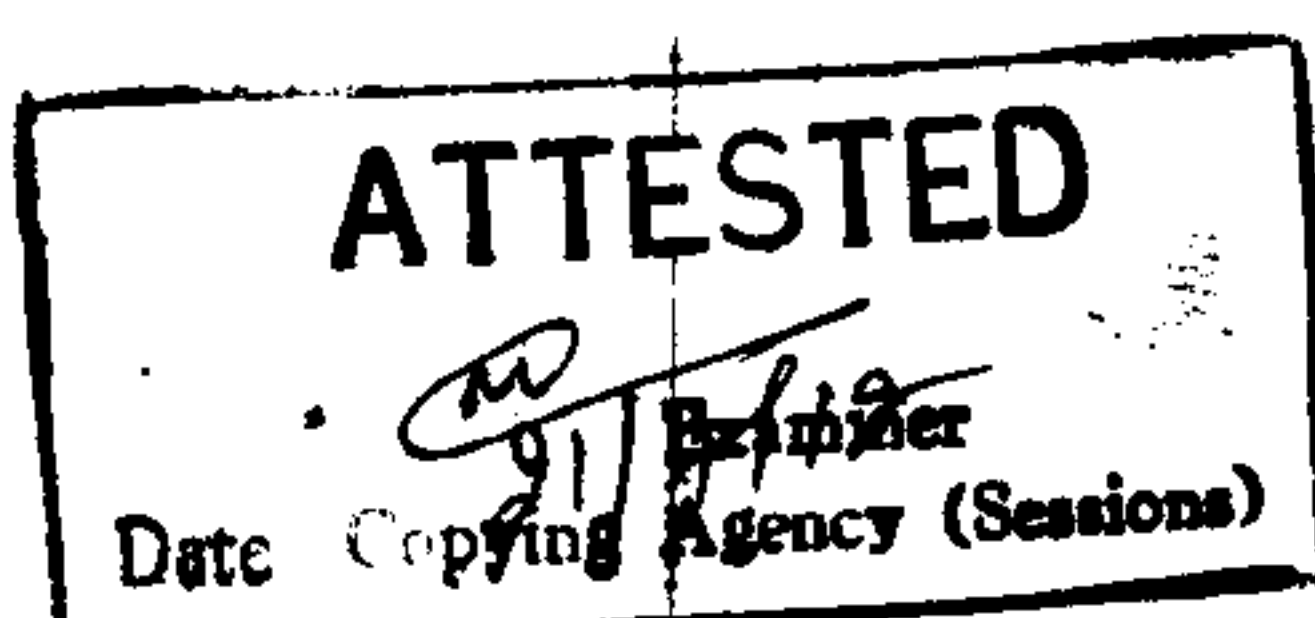
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Provided that any person sponsoring or cause to be sponsored, carrying or causing to be carried on any venture capital funds or collective investment scheme operating in the securities market immediately before the commencement of the Securities Laws (Amendment) Act, 1995 for which no certificate of registration was required prior to such commencement, may continue to operate till such time regulations are made under clause (d) of sub section (2) of section 30.

(emphasis supplied)

21. Thus, it becomes clear that after 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 scheme unless he obtains a certificate of registration from the Board in accordance with the Regulations. Under proviso to Section 12(1B), companies which were operating collective investment schemes immediately before the (amendment) Act, 1995, such companies were permitted to continue to operate such schemes till the time, the Regulations are made under clause (d) of sub-Section 2 of Section 30 of the Act. In other words if a company was operating a collective investment scheme prior to January 25, 1995 when Section 12(1B) was inserted in the Act, such companies were permitted to operate such scheme till the time Regulations are made under the provisions of Section 30 of the Act.

22. In the instant case company accused was incorporated on July 11, 1995 and started its business w.e.f July 21, 1995. This fact is proved from the Memorandum and Articles of Associations of company accused, which is part of Ex. CW1/5. Since, the company accused was



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incorporated after January 25, 1995, in terms of Section 12 (1B) of the Act, company accused was not entitled to mobilize funds through collective investment schemes unless company accused obtained a certificate of registration. Admittedly, company accused had not obtained any such certificate, thus company accused had violated Section 12(1B) at the time of launching/sponsoring the collective investment schemes.

23. **Now** question arises as to whether company accused had mobilized any fund through collective investment schemes or not?

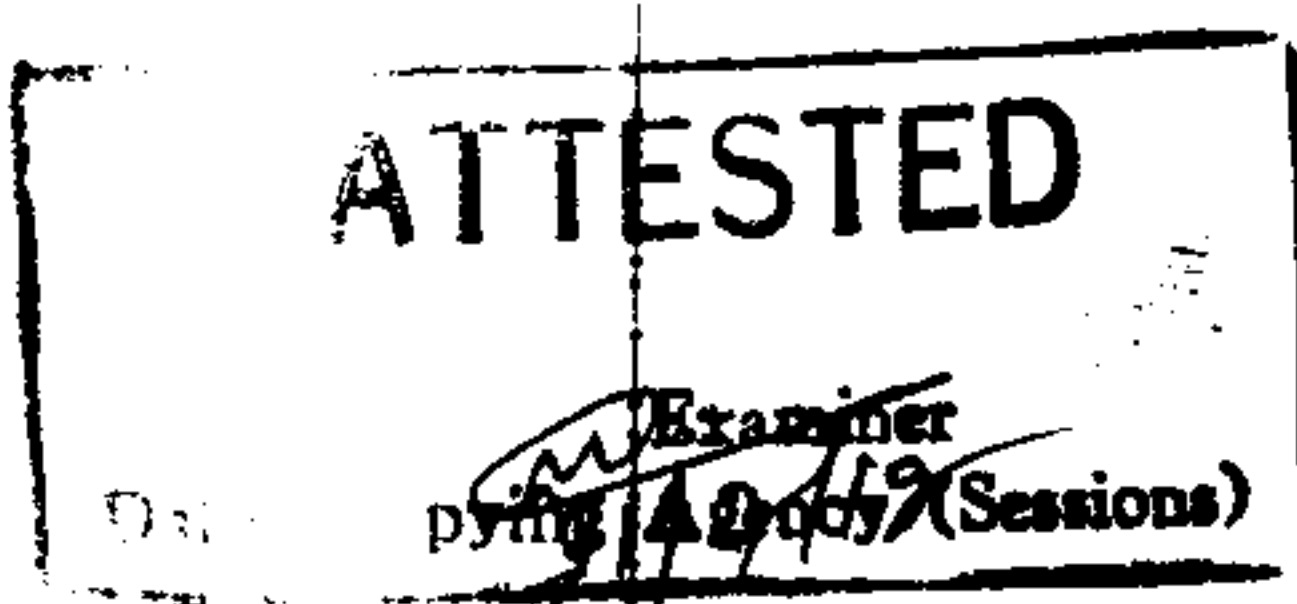
24. **Vide** letter dated May 27, 1998 (Ex. CW1/5), company accused had sent the attested copy of balance-sheet for the year ending March 31, 1996 stating that company accused had liability towards the investors to the tune of ₹ 22,32,746/-. SEBI has also filed the copy of balance-sheet of the accused company for the year ending March 31, 1998, which SEBI has received from ROC and is the part of Ex. CW2/1. Perusal of the balance-sheet reveals that the liability of the company accused towards the investors was ₹ 1, 87,23,512/-. Thus it is established beyond the shadow of doubts that company accused had mobilized the said amount by launching different collective investment schemes. Since company accused had not obtained any certificate of registration before launching the said schemes, company accused had violated Section 12(1B) of the Act, which is punishable under Section 24(1) of the Act.

25. **Now** coming to the question as to whether company accused had violated any regulation of CIS Regulations?

26. **CIS** Regulations were notified on October 15, 1999. As per

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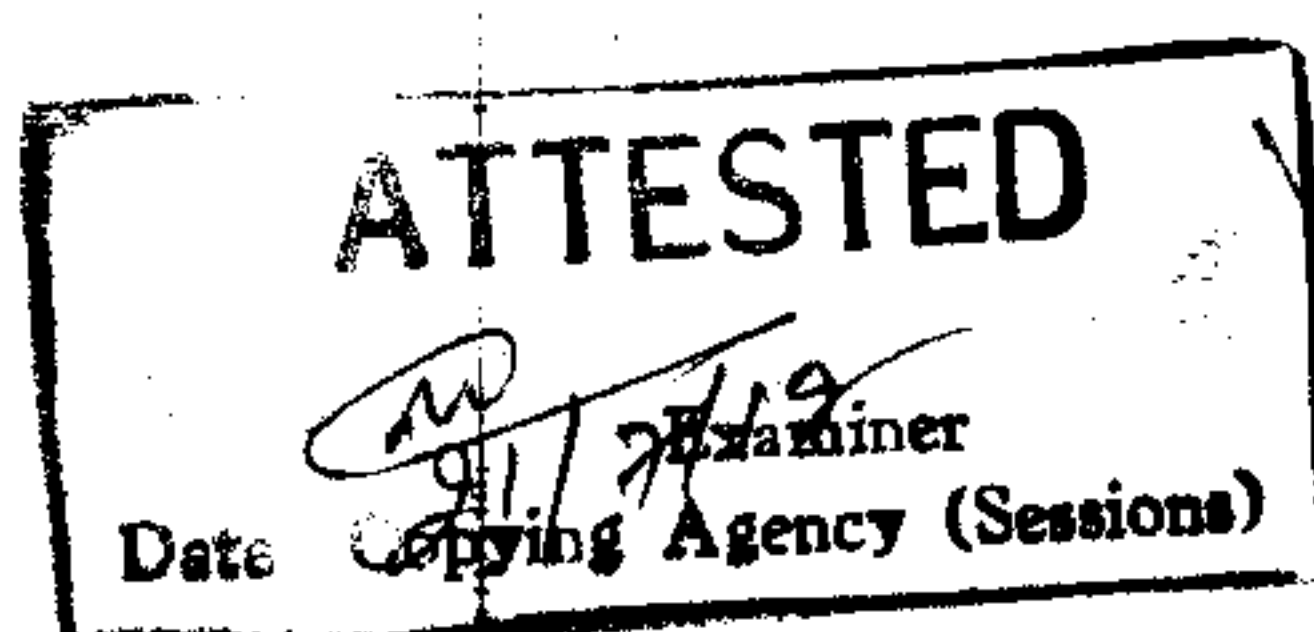
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the Regulations the schemes, which were in operation prior to the notification of the said Regulations were termed as existing schemes. In terms of Regulation 5, any person who was operating any scheme prior to the commencement of these regulations was supposed to move an application within a period of two months seeking certificate of registration. But company accused failed to move any such application. Company accused in its letter dated May 26, 2000 (Ex, CW1/18) intimated the SEBI that company accused had not applied for registration as company accused intended to wind up the schemes. Since, company accused did not apply for seeking the certificate of registration, company accused was bound to refund the amount to the investors and to submit the winding up and repayment report on the prescribed format in terms of Regulation 73. Indisputably, company accused had not filed winding up and repayment report with the SEBI till date. Thus, company accused also violated Regulation 73. Violating Regulation 5 & 73 of the said Regulations is punishable under Section 24(1) of the SEBI Act.

27. **Now** coming to the contention as to whether A2, A3, A4, A7 and A8 are also liable for the above said violations or not?

28. **Learned** counsel appearing for accused persons contended that the said accused persons are not liable for the above violations as they were sleeping directors in the company accused and Ms. Gurdev Kaur Saini had induced them to become a director in the company accused. It was submitted that the above accused were the investors in the company accused and had no role in the day to day affairs of the company accused. In support of his contention, learned defence counsel has relied upon the judgment *Rashima Verma Vs. SEBI (supra)*.

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29. **Before** proceeding further, I deem it appropriate to examine the judgment title **Rashima Verma v. SEBI (supra)**. Perusal of the judgment reveals that the facts of the said case were totally different from the facts in hand. In the aforesaid case, petitioner was mere a subscriber and not a director whereas in the instant case accused persons except A8 in their respective deposition admitted that they were directors in the company accused but took the plea that they were sleeping directors, thus onus is upon the accused persons to establish that they were mere sleeping directors and had no concerned with the activities of the company. Observations made by the Hon'ble Court in para 13 of the above said judgment are relevant and same are as under:

".....A director, manager or secretary or any other officer of the company would also be deemed to be guilty if an offence is committed with his consent or connivance or is attributable to any neglect on his part. For that purpose, he need not be in charge of and responsible to the company for the conduct of his business."

30. **Now**, I proceed to examine the role of individual director.

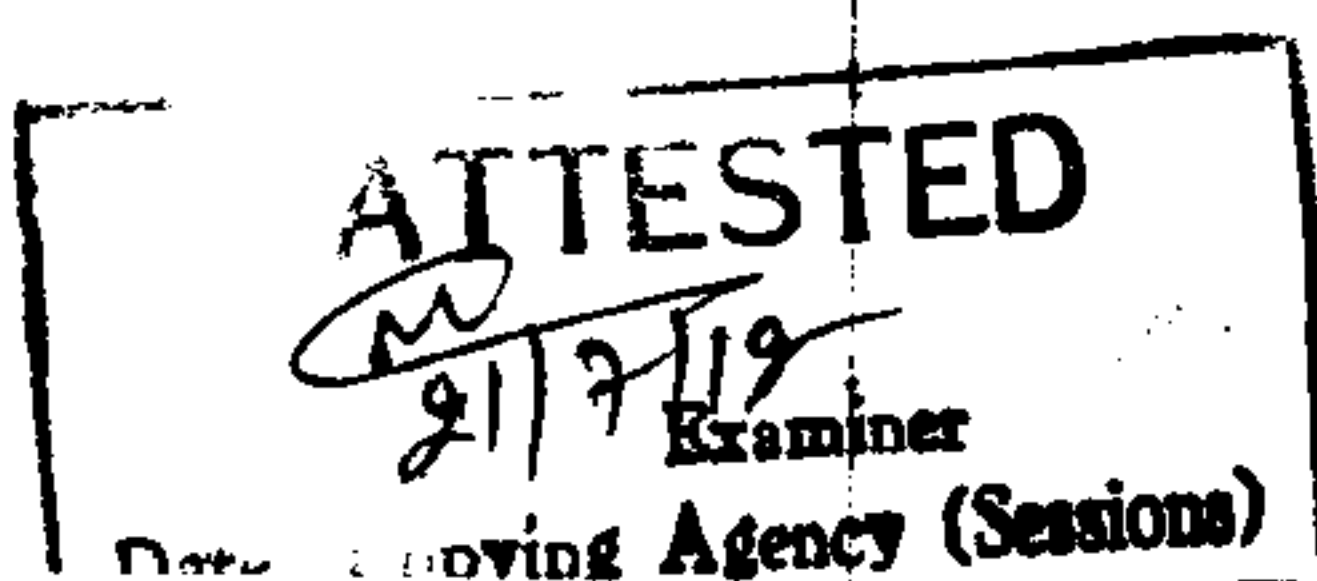
31. **SEBI** has relied upon the list of directors as on March 31, 1998 submitted by the company accused to the ROC and same is part of Ex. CW2/1. As per said list, A4, A7 and A8 had joined the company accused on March 21, 1998. It means that they can not be held liable for the violations committed by the company accused prior to that date. It is also admitted case of the SEBI that company accused had mobilized the funds through various collective investment schemes during the period 1995 to 1998. Thus, they cannot be held liable for the funds generated by the company accused in violation of Section 12(1B) of the Act.

32. **But** A4, A7 and A8 were the directors of the company

[Signature]
16/11/19

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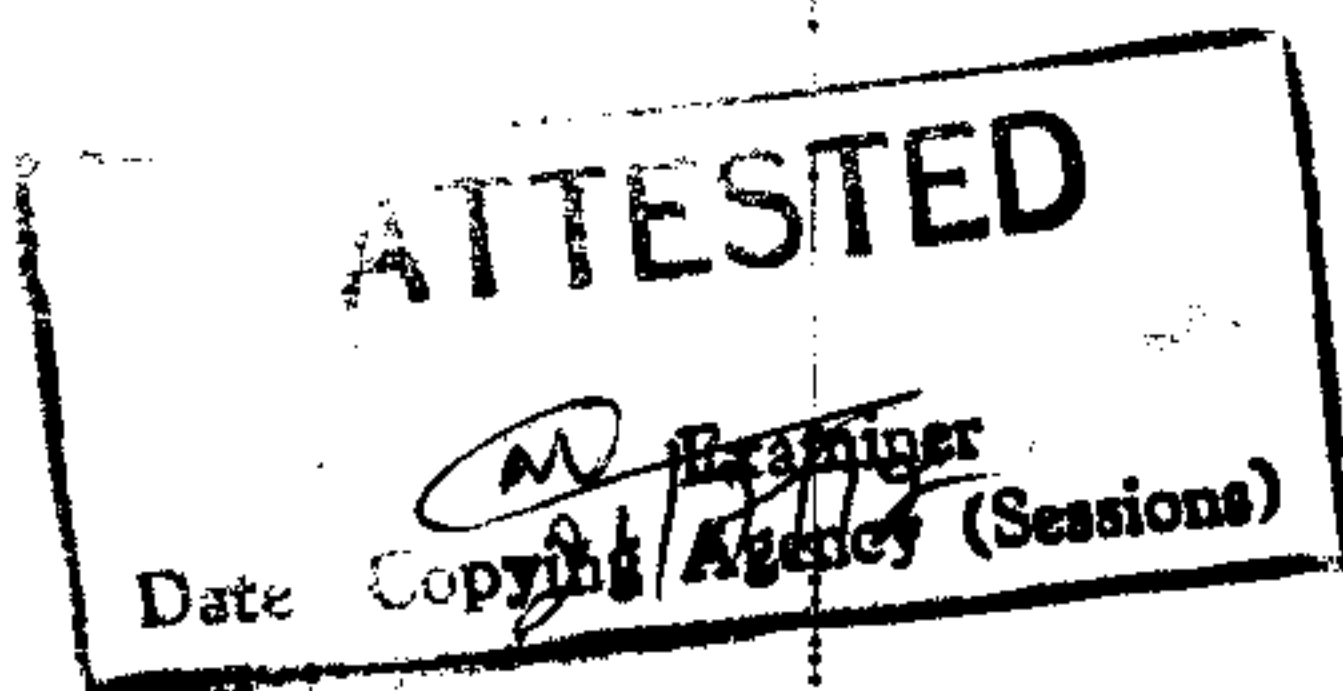


SEBI Vs. Pioneer Forest India & others

accused on October 15, 1999 when the CIS Regulations were notified. After joining the company accused as directors, it became their paramount duty to ensure that company accused must have complied with the mandatory regulations of CIS Regulations. As already discussed that company accused had informed the SEBI vide its letter dated May 26, 2000 (Ex.CW1/18) that company accused had not applied for seeking certificate of registration as company accused intended to wind up the CIS. Once company decided not to apply for certificate of registration after notification of the CIS Regulations. It became the pious duty to the Board of directors of the company accused to ensure that company accused must have refunded the amount to the investors in terms of the regulations of CIS Regulations.

33. From clause 60 and 61 of the Articles of Associations of the company accused it becomes abundantly clear that only Board of Directors of the company was empowered to borrow money, it means that it was the responsibility of the Board of Directors to refund the amount to the investors. SEBI had sent a legal notice to the company accused and its directors vide notice Ex. CW1/12.

34. It is admitted case of A4 Gurudev Singh that he had written a letter dated December 2, 1998 to the company accused as well as SEBI, which is Ex. CW1/8 wherein he admitted that he was working with the company accused since 1996 and was arranging deposits from public in various schemes for the company. Thus, it becomes clear that he was actively involved in mobilizing fund on behalf of the company. In March 1998, he had joined the company accused as Director. Though in his deposition he deposed that Ms Gurdev Kaur Saini had insisted him to join the company for her unlawful motive, yet he failed to depose how



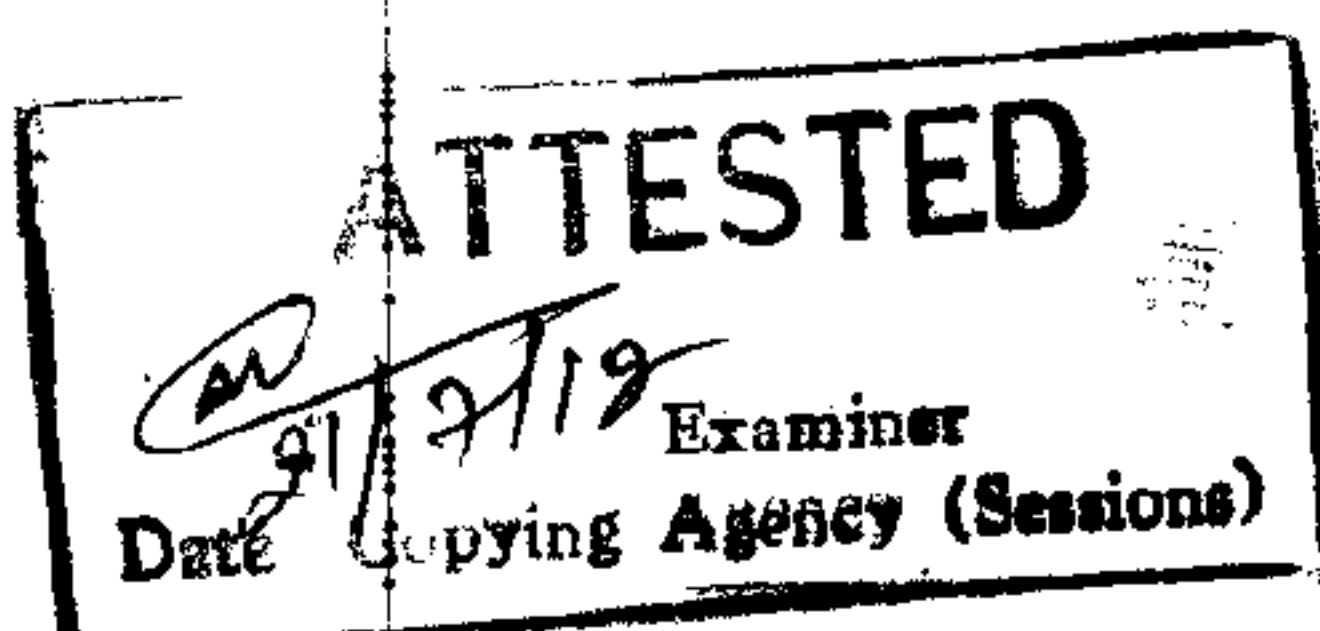


SEBI Vs. Pioneer Forest India & others

she insisted him to join the company. Moreover, when he joined the company to fulfil the unlawful motive of Ms. Gurdev Kaur Saini, how can he escapes from his liability. Though he took the plea that he was only sleeping director in the company but he failed to lead any cogent evidence in this regard. On the contrary he admitted in Ex. CW1/8 that he was arranging deposits for the company accused from general public. Admittedly, it is not the case of A4 that he was an employee of the company accused. Moreover, once he joined the Board of Directors of company accused, it became his duty to ensure that company had complied with the mandatory provisions of CIS Regulations.

35. Since A7 and A8 had also joined the company accused on March 21, 1998, thus after joining the company accused, it was their duty to ensure that company accused had complied with the mandatory provisions of CIS Regulations by refunding the amount to the investors and by filing winding up and repayment report with the SEBI on the prescribed formate.

36. Negligence on their part was that after joining the Board of Directors of the company accused they were not vigilant to check whether their company was complying with the mandatory provisions of CIS Regulations or not. Since, it was the duty of the Board of Directors of the company accused to comply with the mandatory regulations of the CIS Regulations, being the part of Board of Directors, it was their duty to ensure that their company had complied with the mandatory provisions of law. But they failed to perform their duty diligently. Once, they failed to perform their duty diligently. it amounts negligence on their part, which attracts vicarious liability by virtue of Section 27(2) of SEBI Act.





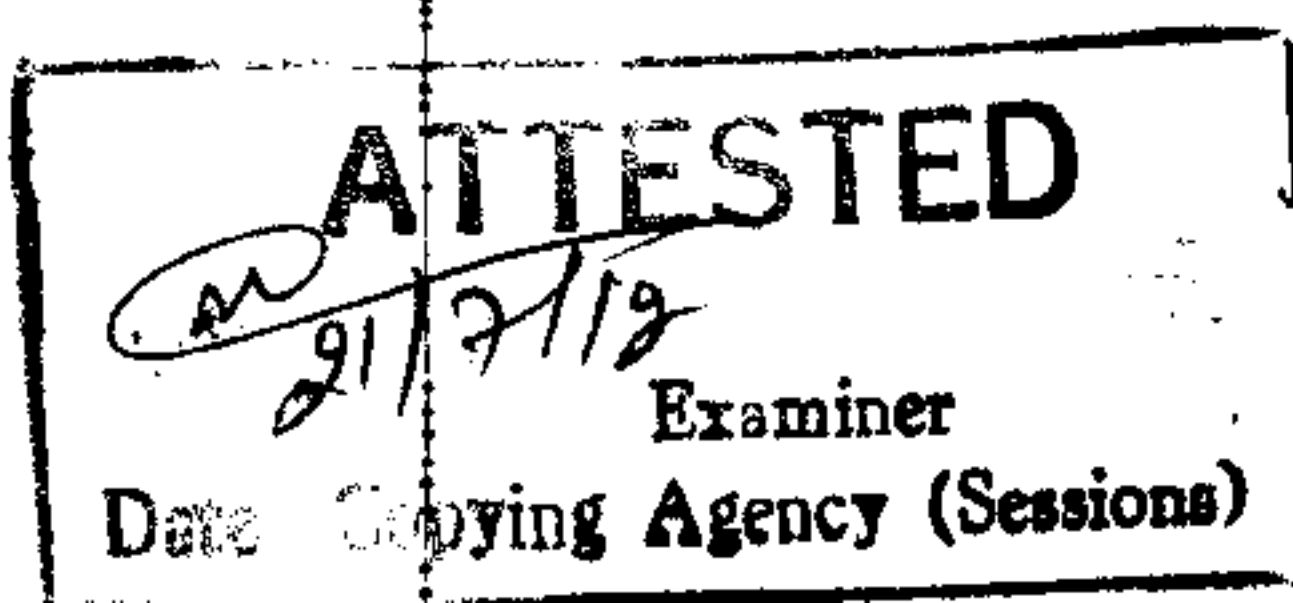
SEBI Vs. Pioneer Forest India & others

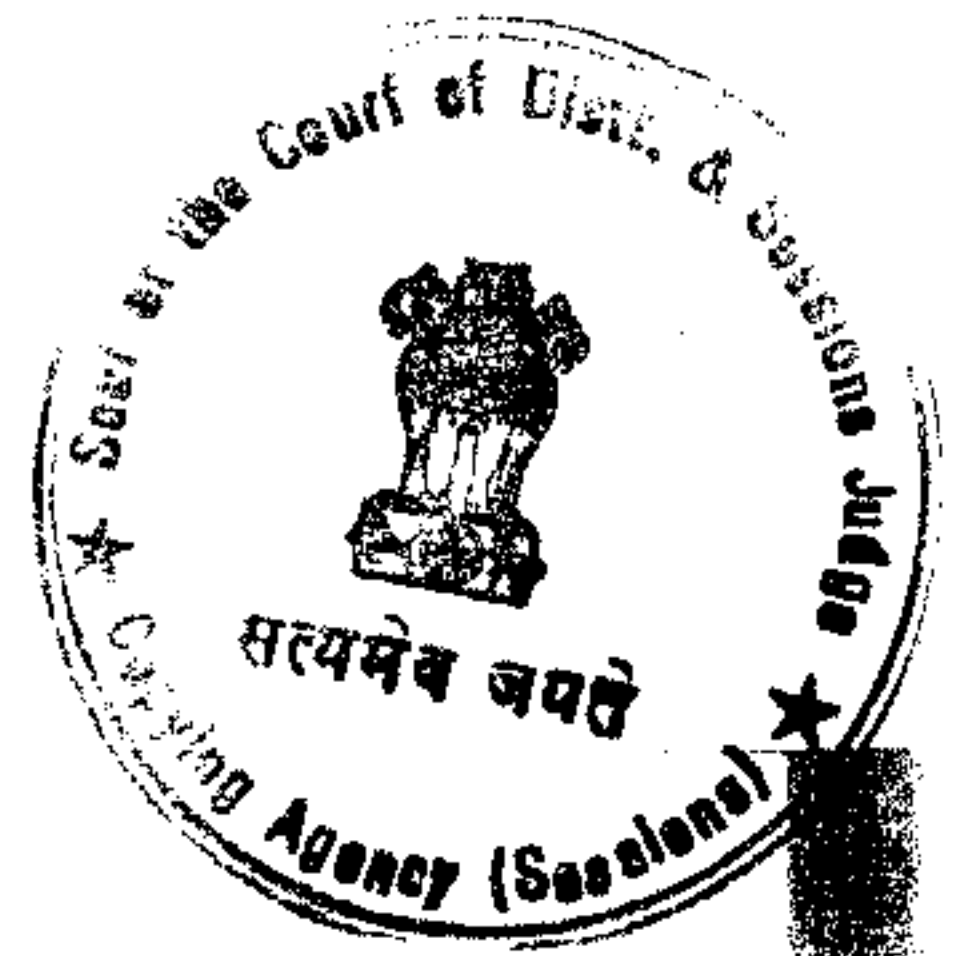
37. **Now** coming to the role of A2 and A3. A2 had joined the company accused as Director since inception i.e. July 11, 1995. His name is also mentioned in the Articles of Association being the first directors. He had also signed the balance-sheet of company accused for the year ending March 31, 1998. He had also sent the resignation of Ms. Gurdev Kaur Saini to the ROC being the director of company accused. He had also signed the balance-sheet of the company accused for the year ending March 31, 1996. As already discussed that company accused had mobilized fund during the period 1995 to 1998. Thus, all the amount was mobilized during the period when A2 was director of the company. As already discussed that as per Articles of Association of company accused, only Board of Directors of the company accused was competent to raise fund, thus, all the directors who were on the Board of Directors of the company were liable for the violations committed the company accused. Since, A2 had signed important documents on behalf of company accused from time to time, it establishes that A2 was actively involved in the day to day affairs of the company accused.

38. **Now** coming to the role of A3. As per list submitted by the company accused with ROC, A3 had joined the company accused on June 19, 1996. As per the balance-sheet of the company accused for the year ending March 31, 1996, company accused had mobilized fund to the tune of ₹ 22,32,746. However, balance-sheet for the year ending March 31, 1998 reveals that company accused had mobilized funds to the tune of ₹ 1,87,48,872/-. It means that during the tenure of A3, company accused had mobilized substantial amount from public through its various CIS. Once, he joined the Board of Directors of the company accused, it became his duty to ensure that company had not violated any provisions of SEBI Act while mobilizing fund through its various schemes.

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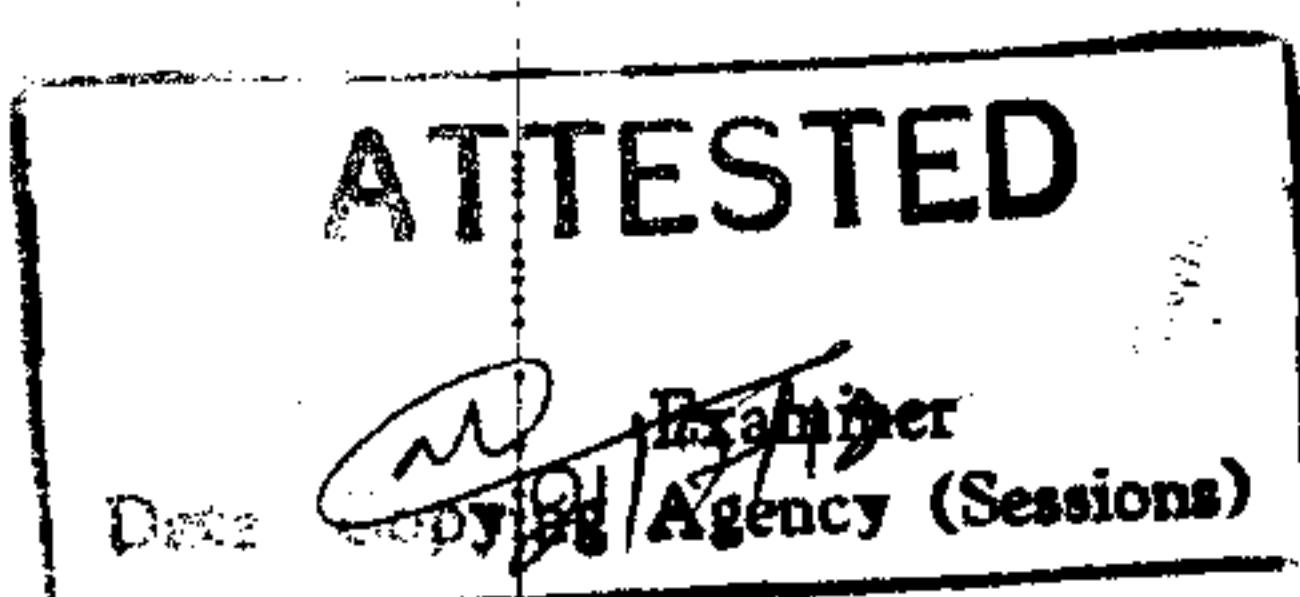
SEBI Vs. Pioneer Forest India & others

but he failed to check the said violations. Being the members of Board of Directors, it was his duty to prevent the company accused to raise fund in violation of provisions of SEBI Act but he failed to do so. A3 has relied upon the letter dated July 12, 2000 (Ex.CW1/21) wherein he admitted that he was director of the company accused. It was submitted that he had pointed out the violations committed by the company accused in the year 2000. No doubt vide above letter A3 had pointed out the irregularities going on in the company accused but A3 failed to produce any document to show, the steps he had taken to prevent the company from mobilizing funds when company was raising funds in violations of Section 12 (1B) of the Act. Thus, he can not escape from his liability.

39. At last but not least, the object of provisions of SEBI Act and CIS Regulations was to protect the rights and interest of gullible and unwary investors who had invested their hard earned money in the schemes launched by various companies. The entire object of the CIS Regulations was to streamline the collective investment schemes launched by numerous companies at that time and to ensure that all investors get their hardened money back with interest. But unfortunately, even till date in some matters investors failed to get their amount. Thus, at the time of appreciating evidence, Court has to keep in mind the object of the legislation.

40. Pondering over the ongoing discussion, I am of the considered opinion that SEBI has succeeded to establish beyond the shadow of all reasonable doubts that company accused had mobilized funds to the tune of ₹ 1,87,48,872/- in violation of Section 12 (1B) of the SEBI Act and company accused had also violated regulation 5 and 73 of CIS Regulations, which are punishable under Section 24(1) of SEBI Act.

[Signature]
16/12

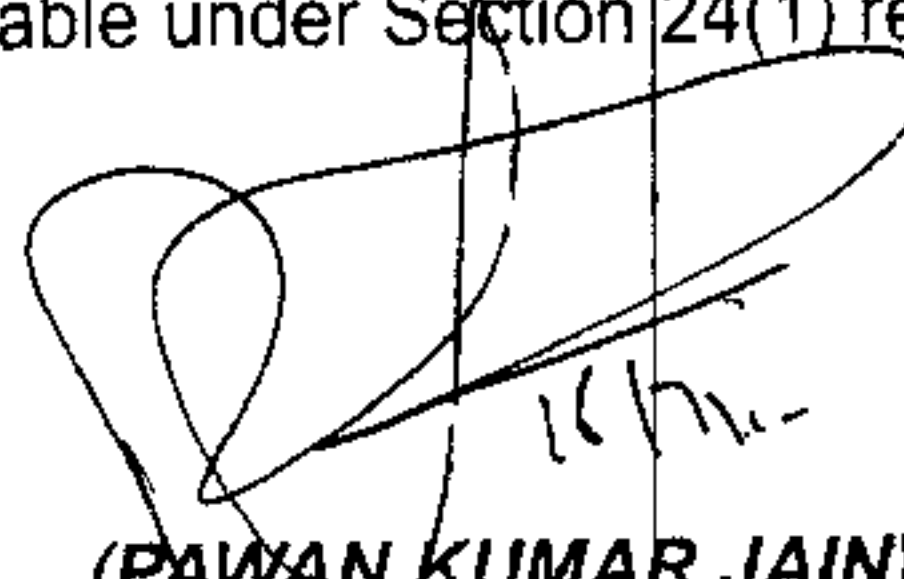




SEBI Vs. Pioneer Forest India & others

SEBI has also succeeded to establish beyond the shadow of all reasonable doubt that A2 and A3 were also the persons in charge of and responsible to, for raising the said fund in violation of provisions of SEBI Act and CIS Regulations. SEBI has also succeeded to establish beyond the shadow of all reasonable doubts that A4, A7 and A8 were negligent in performing their duty being the directors as they failed to ensure the compliance of CIS Regulations by the company accused thus they are also liable in terms of Section 27(2) of SEBI Act. Thus, I hereby hold A2 Balwinder Singh, A3 Kulwinder Singh guilty for the offence punishable under Section 24(1) with the aid of Section 27 (1) and (2) of SEBI Act and also hold the A4 Gurudev Singh Saini, A7 Hardyal Singh and A8 Ajay Kumar Sharma guilty for the offence punishable under Section 24(1) read with Section 27(2) of SEBI Act.

Announced in the open Court
on this 16th day of July, 2012

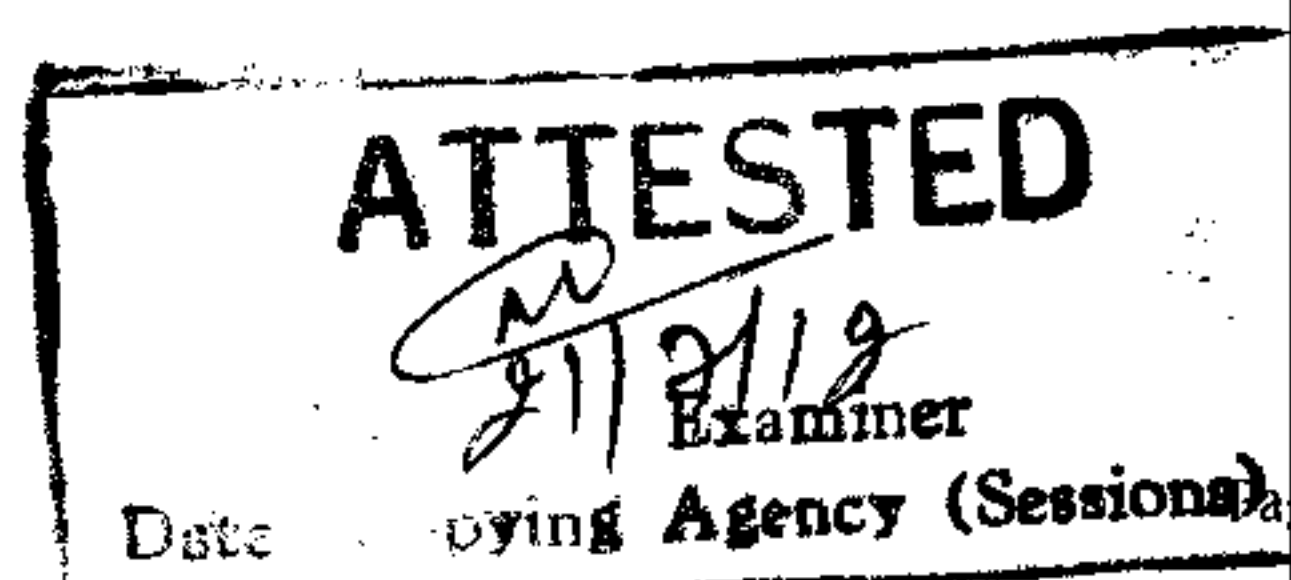

(PAWAN KUMAR JAIN)

ADDITIONAL SESSIONS JUDGE-01
CENTRAL/THC/DELHI

Copy given to Court in
the Court office on 18/7/12
18/7/12

Kulwinder Singh
Balwinder Singh
Ajay Kumar
Hardyal Singh
Gurudev Singh

CC No. 67/10



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Item No. 8:

CC No. 67/10

18.07.2012

Present: Sh. Sanjay Mann, Advocate, counsel for SEBI.
Accused No.1 is a company and has already been deleted vide order dated 13.09.2007.
Accused No. 5 & 6 are PO vide order dated 26.09.2007.
Accused No. 2, 3, 4, 7 & 8 are in person with counsel Sh. Anish Bhola, Advocate.
Accused No. 9 is PO vide order dated 26.09.2011.

Arguments heard on behalf of sentence.

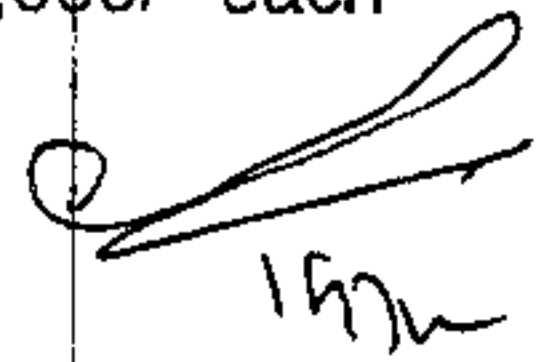
Vide separate judgement.

Convict No. 1 and 2 i.e. Balwinder Singh and Kulwinder Singh are sentenced rigorous imprisonment for the period of one year and fine of ₹ 5 lac each in default three months simple imprisonment for the offence of punishable under Section 24 (1) r/w Section 27 (1) and 27 (2) of the SEBI Act whereas convict 3 to 5, namely, Gurudev Singh Saini, Hardayal Singh and Ajay Kumar Sharma are burdened with the fine of ₹ 2 lac each in default one month simple imprisonment for the offence of punishable under Section 24 (1) r/w 27 (1) and (2) of the SEBI Act.

All the convicts have deposited the fine amount.

Copy of order and order on the point of charge be given to the convicts and their counsels free of cost.

An application on behalf of convict Balwinder Singh and Kulwinder Singh is moved for suspension of substantial sentence. Since, they have deposited the fine amount, substantial sentence is suspended till 31.08.2012 on furnishing a personal bond in the sum of ₹ 10,000/- each with one surety in the like amount.



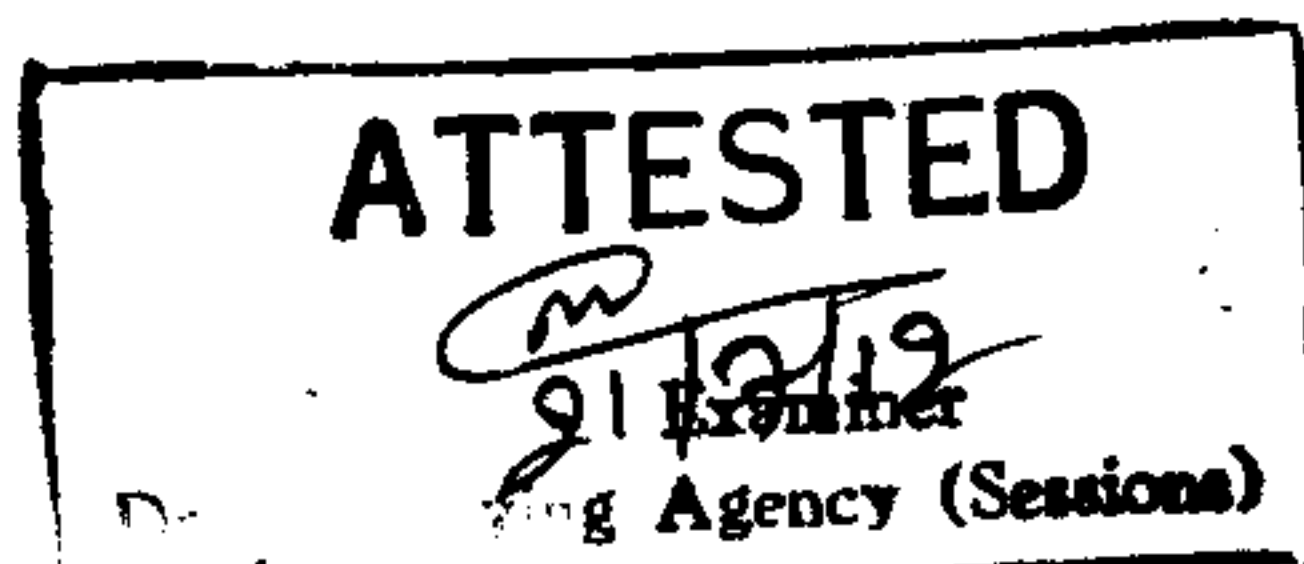
99

TESTED
Examiner
Agency (Sessions)



Bail bond furnished, same are accepted.
Since, the accused No. 5, 6 and 9 are PO.
File be consigned to record room with direction same be
revived as and when they are arrested.


[PAWAN KUMAR JAIN]
ASJ-01/CENTRAL/DELHI
18.07.2012





SEBI Vs. Pioneer Forest India & others

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

Complaint Case No.67 of 2010
ID No: 02401R0239782003

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 Asst. General Manager, Rakesh Banot.

Versus

1. **Sh. Balwinder Singh**
Director of accused no. 1
S/o Sh. Nagenal Singh
R/o 247, Village Khanoor,
Post Office Jallowal,
Distt. Hosiarpur, Punjab
2. **Sh. Kulwinder Singh**
Director of accused no. 1
S/o Sh. Kartar Singh
R/o Village & PO Kakkon,
Distt. Hosiarpur, Punjab
3. **Sh. Gurudev Singh Saini**
Director of accused no. 1
S/o Sh. S. Swaran Singh,
R/o Near Railway Crossing,
Phagwara Road, Hosiarpur,
Punjab

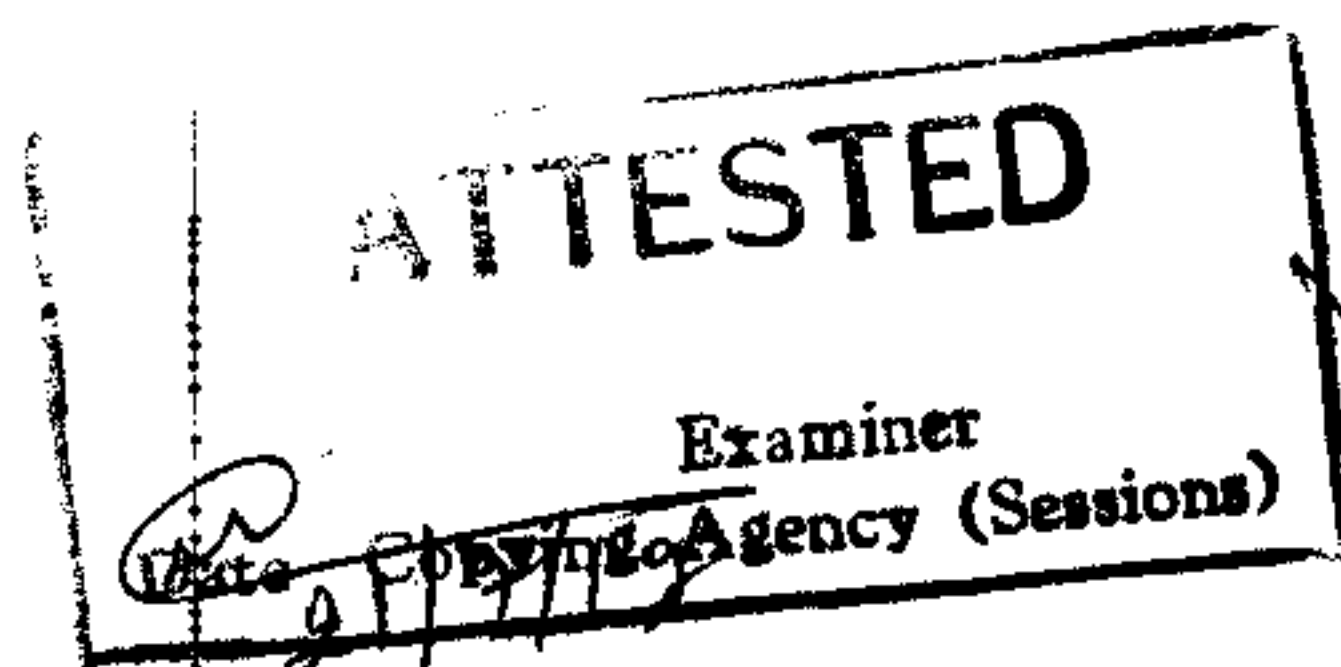
.....Convict no.1

..... Convict no.2

..... Convict no.3

CC No. 67/10

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SEBI Vs. Pioneer Forest India & others

4. **Sh. Hardy Singh**
Director of accused no. 1
S/o S Ujjagar Singh
R/o Village & PO Wahid,
The Phagwara, Distt. Kapurthala,
Punjab

..... Convict no.4

5. **Sh. Ajay Kumar Sharma**
Director of accused no. 1
S/o Sh. Khushee Ram Sharma
R/o 45/154, Jarnail Singh Building,
GT Road Phagwara, Distt. Kapurthala,
Punjab

.....Convict no.5

Present: Sh. Sanjay Mann, Advocate, Counsel for SEBI.
Sh. Anish Bhola, Advocate, counsel for all convicts

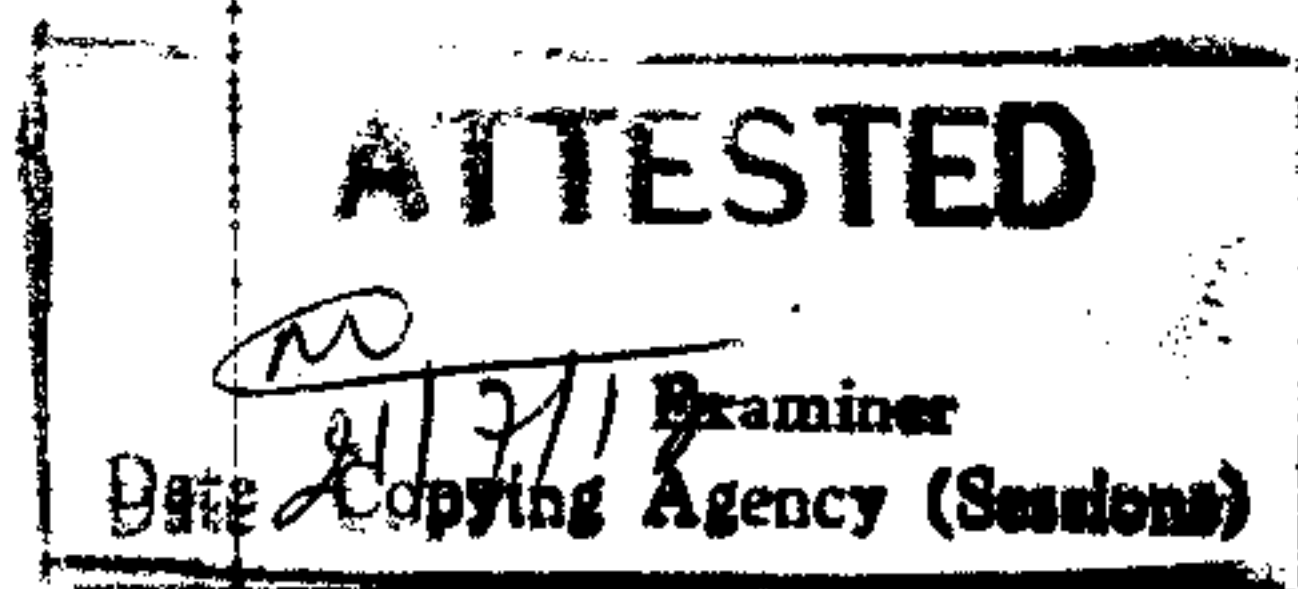
ORDER ON THE POINT OF SENTENCE :

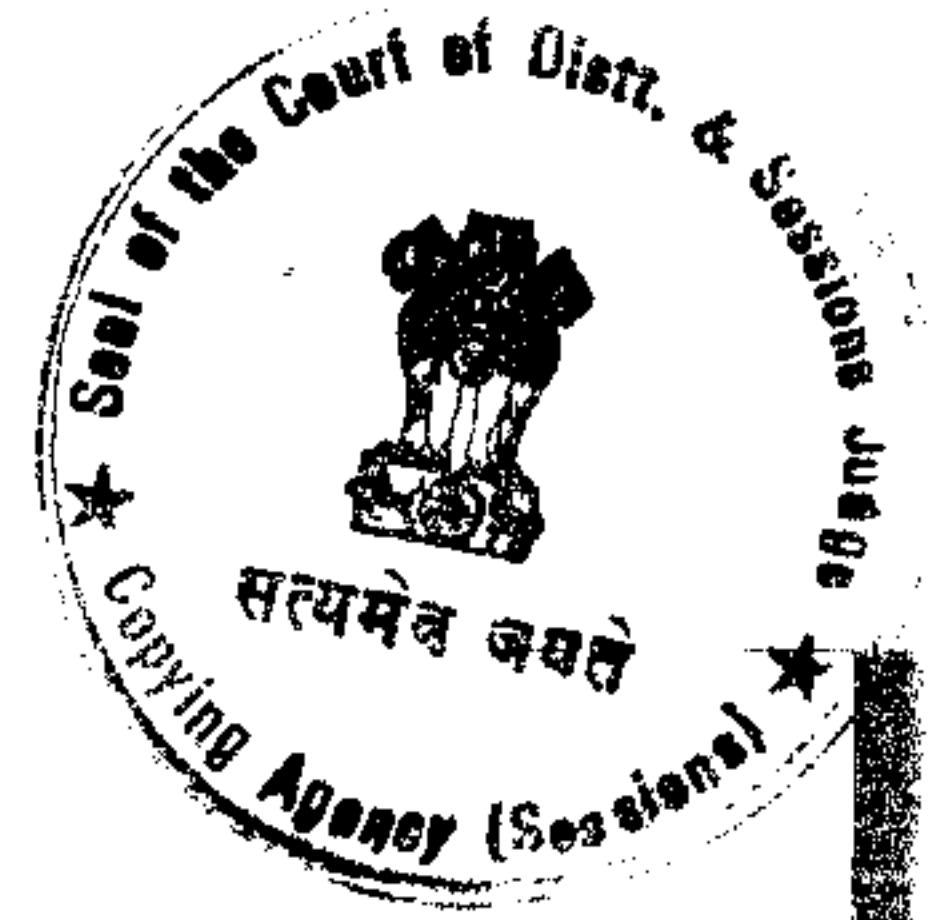
1. Vide separate judgment dated July 16, 2012, convict nos. 1 & 2 were held guilty for the offence punishable under Section 24(1) read with Section 27 (1) and 27(2) of SEBI Act while convict nos. 3 to 5 were held guilty for the offence punishable under Section 24(1) read with Section 27(2) of SEBI Act.

2. Learned counsel appearing for the convicts requests for a lenient view on the grounds that they are law-abiding citizens having no criminal antecedents. It is submitted that they are the sole bread-earner of their respective families. It is further urged that convicts had already

CC No. 67/10

Page no. 2 of 5





SEBI Vs. Pioneer Forest India & others

3 to 5 had joined the company accused only on March 21, 1998 and by that time company accused had already mobilized the said fund. Negligence on their part was that they failed to ensure the compliance of CIS Regulations after joining the company accused as directors whereas all the fund was generated during the tenure of convict nos. 1 & 2. Since there is substantial difference between the role played by convict nos. 1 & 2 on the one hand and convict nos. 3 to 5 on the other hand, thus, I am of the view that convict nos. 3 to 5 deserve some leniency.

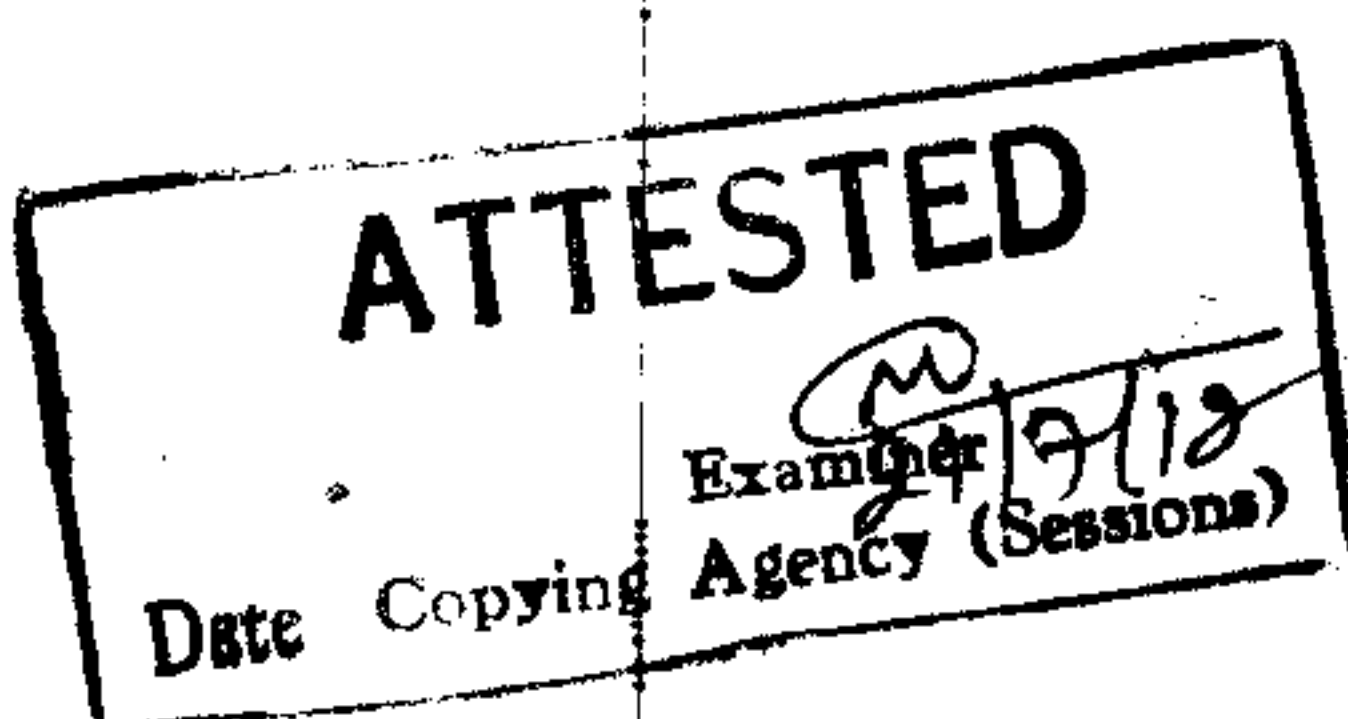
7. No doubt company accused had generated the funds to the tune of ₹ 1, 87, 48, 872/ through various CIS but from the letter dated September 6, 2001 (Ex.CW1/32), it transpires that company accused had already refunded the amount to the tune of rupees ninety lacs. This is a relevant mitigating factor to determine the sentence. Simultaneously, it is also true that convicts have to still pay more than rupees ninety lacs to the investors.

8. The other factors as pointed out by learned defence counsel that the convicts are law-abiding citizens having no criminal antecedents and are sole bread-earners of their respective families are not much significant because in such type of offences convicts are generally first offenders having no previous criminal record. Thus, such type of plea is available to each and every convict in such type of offence.

9. Considering the above discussion and facts and circumstances of the case, I hereby sentence the convict nos. 1 & 2 rigorous imprisonment for a period of one year and a fine of rupees five lac each in default further three months simple imprisonment for the offence punishable under Section 24(1) read with Section 27(1) & 27(2)

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SEBI Vs. Pioneer Forest India & others

of SEBI Act whereas convict nos. 3 to 5 are burdened with a fine of ₹ 2.00 lac each in default one month simple imprisonment for the offence punishable under Section 24(1) read with Section 27(2) of the SEBI Act.

10. Copy of the judgment along with order on the point of sentence be given to the convicts free of cost.

11. File be consigned to record room.

Announced in the open Court
on this 18th day of July, 2012


(PAWAN KUMAR JAIN)
ADDITIONAL SESSIONS JUDGE-01
CENTRAL/THC/DELHI

*Copy given to Convict
in the Court of Rec
on 18/7/12
3/8/12*

*Kulinder Singh
Balinder Lal
Ajay Kumar
Hardev Singh
Gurdev Singh*

Office of the District & Sessions Judge Delhi	
Certified to be True Copy	
Date	<i>21/7/12</i>
Authenticated under Section 73 of the Indian Evidence Act, 1978	