

IN THE COURT OF ADDITIONAL CHIEF METROPOLITAN

MAGISTRATE, DELHI

CC NO: 30 OF 2004

14/6/11/04

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28/12/11

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.

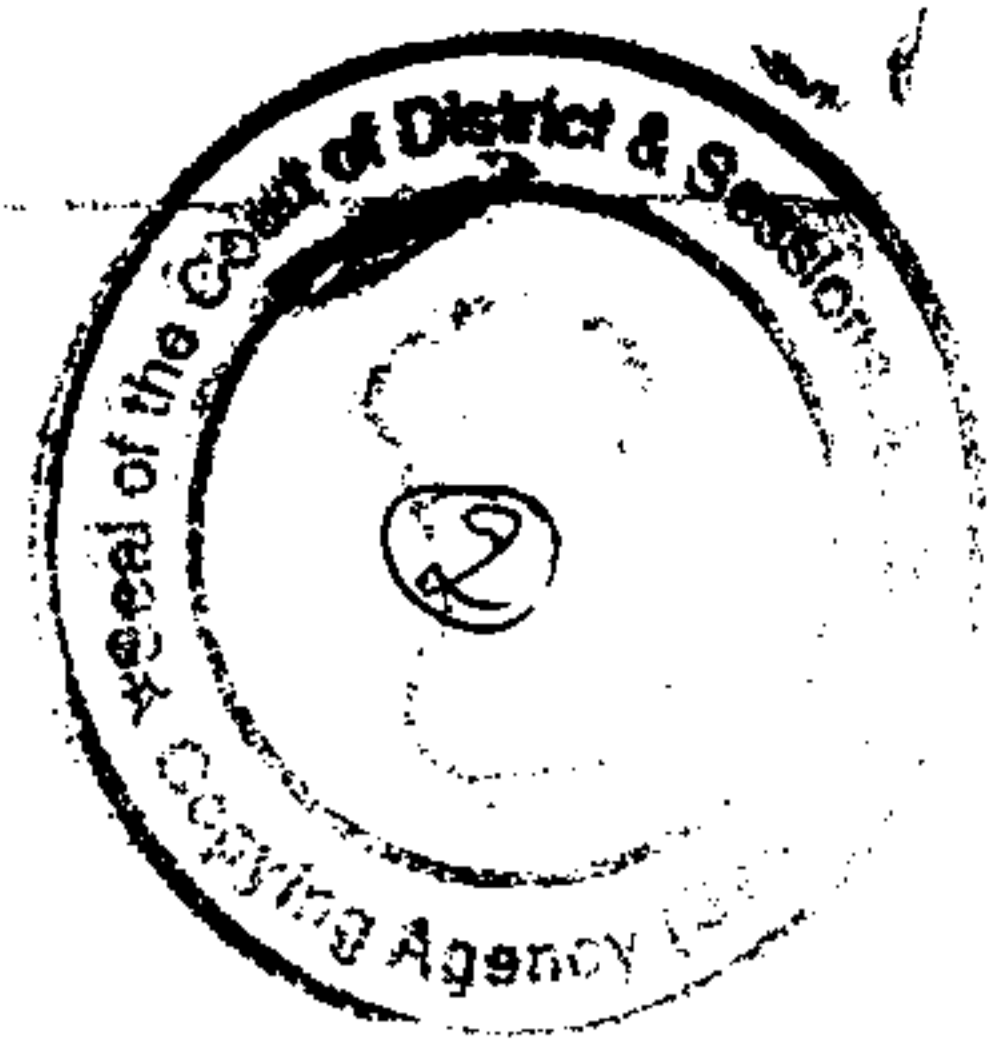
...Complainant

VERSUS .

1. Samarpan Agro Plantation (I) Ltd. a Company incorporated Under the Companies Act, 1956, having its Regd. Office at : H.S.1/61, Sector-A, Sitapur Road, Aliganj, Lucknow, U.P.
2. Shri Lal Ji Singh S/o Shri U.P.N. Singh, Director of Accused No.1, R/o:Kanoongo Pura (South) Bahrich-271801.
3. Shri J.P. Singh, S/o Shri U.P.N. Singh, Director of Accused No.1, R/o:C-118, Sector H, Aliganj, Lucknow, U.P.
4. Shri Anil Mishra S/o Late Shri Sankata Pd. Mishra, Director of Accused No.1, R/o:600, Lucknow Road, Hardoi, U.P.

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5. Shri Abdus Salam S/o Shri Hakim

Abdul Kalam, Director of accused No.

1, Resident of: Hamdard Agency, Reti

Ka Pul, Gorakhpur, U.P.

6. Shri P.K. Pandey S/o Shri D.N. Pandey,

Director of Accused No. 1, R/a: Village

Nibi Dohani, P.O. Sohratgarh, Distt.

Siddhant Nagar, U.P.

7. Shri Mayank Tripathi S/o Lt. Col. ✓

R.S. Tripathi (Retd.) Director of Accused

No. 1, Resident of : 432/15, old

Hyderabad, Behind Kalakankar House,

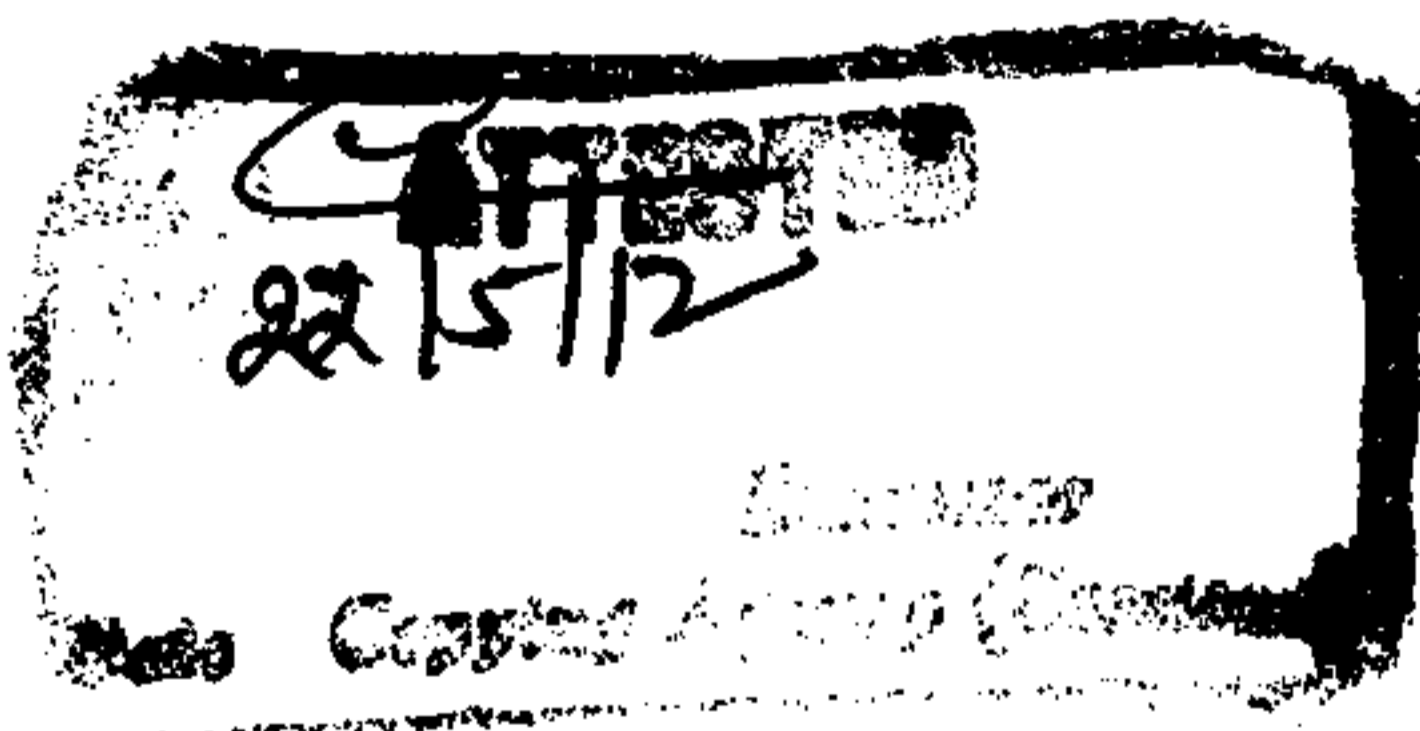
Lucknow U.P.

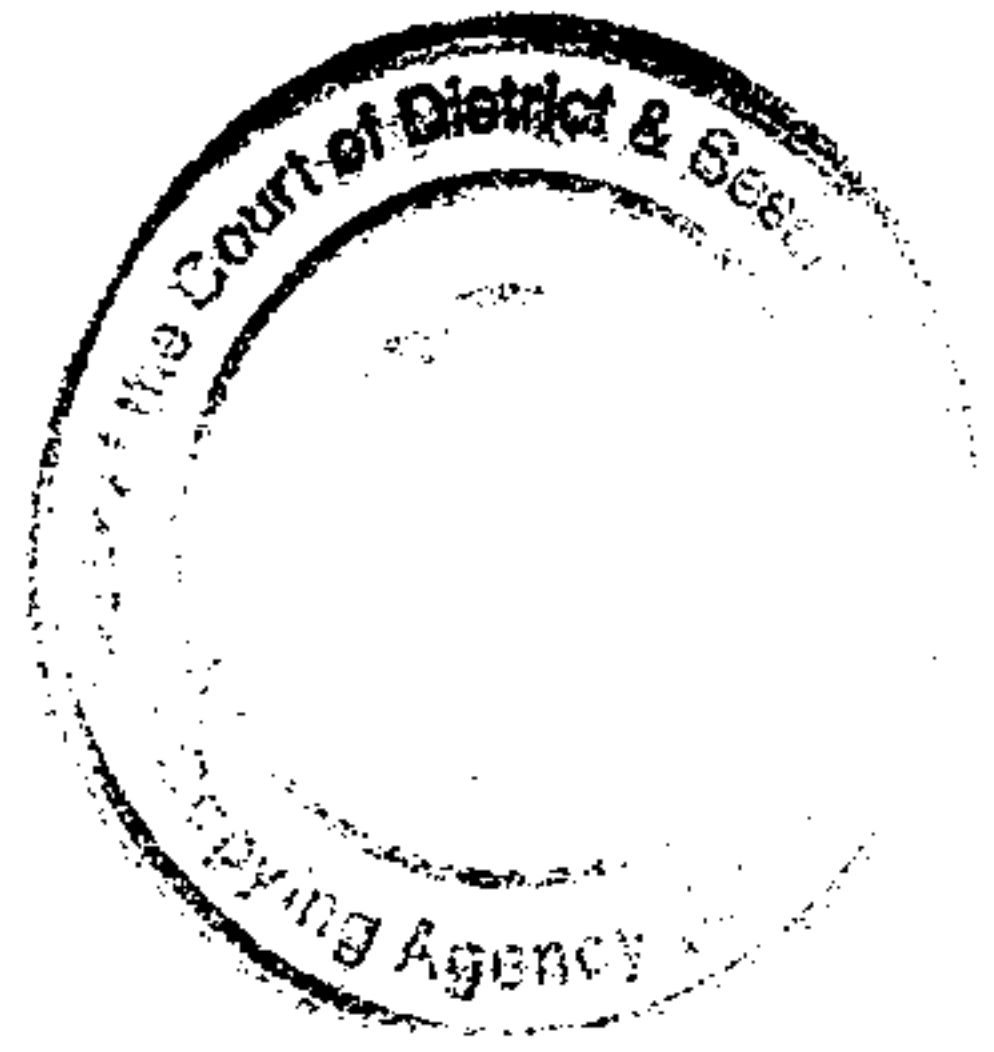
.....Accused

COMPLAINT UNDER SECTION 190 AND SECTION 200 OF THE CODE OF CRIMINAL

PROCEDURE, 1973 READ WITH SEC. 24(1), 27 OF SECURITIES AND EXCHANGE

BOARD OF INDIA ACT, 1992





Item No 9

CC No. 30/10

02.05.2012

**Present:** Sh. Sanjay Mann, Advocate, counsel for complainant  
None for accused No. 1 company.  
Accused No. 2 & 3 are already PO vide order dated 14.05.09 and 02.07.09.  
Accused No. 4, 6 & 7 are in person.  
Sh. O. N. Ratanpal, Advocate appeared on their behalf  
Accused No. 5 is in person with counsel Sh. Rajeev Kumar Bhola, Advocate

Arguments heard.

Vide separate judgment, accused no. 1, 6 and 7 have been held guilty for the offence punishable under Section 24(1) r/w 27 of SEBI Act. However, accused no. 4 & 5 have been acquitted from all the charges.

Arguments heard on the point of sentence.

Vide separate order on the point of sentence, convict no. 1, 2 & 3 have been burdened with a fine of Rs. 25,000/- each in default convicts no. 2 & 3 shall under go simple imprisonment for a period of 15 days for the offence punishable under Section 24(1) of SEBI Act.

Fine amount is paid on behalf of convicts no. 2 & 3. Thus, their surety bond be discharged. Original documents if any be returned to the sureties.

Counsel for SEBI submits that he will take appropriate steps for realization of fine amount after tracing out the assets of the convict company.

Request is allowed.

Since, accused no. 2 & accused no. 3 are proclaimed offenders, file be consigned to record room with direction that the same be revived as



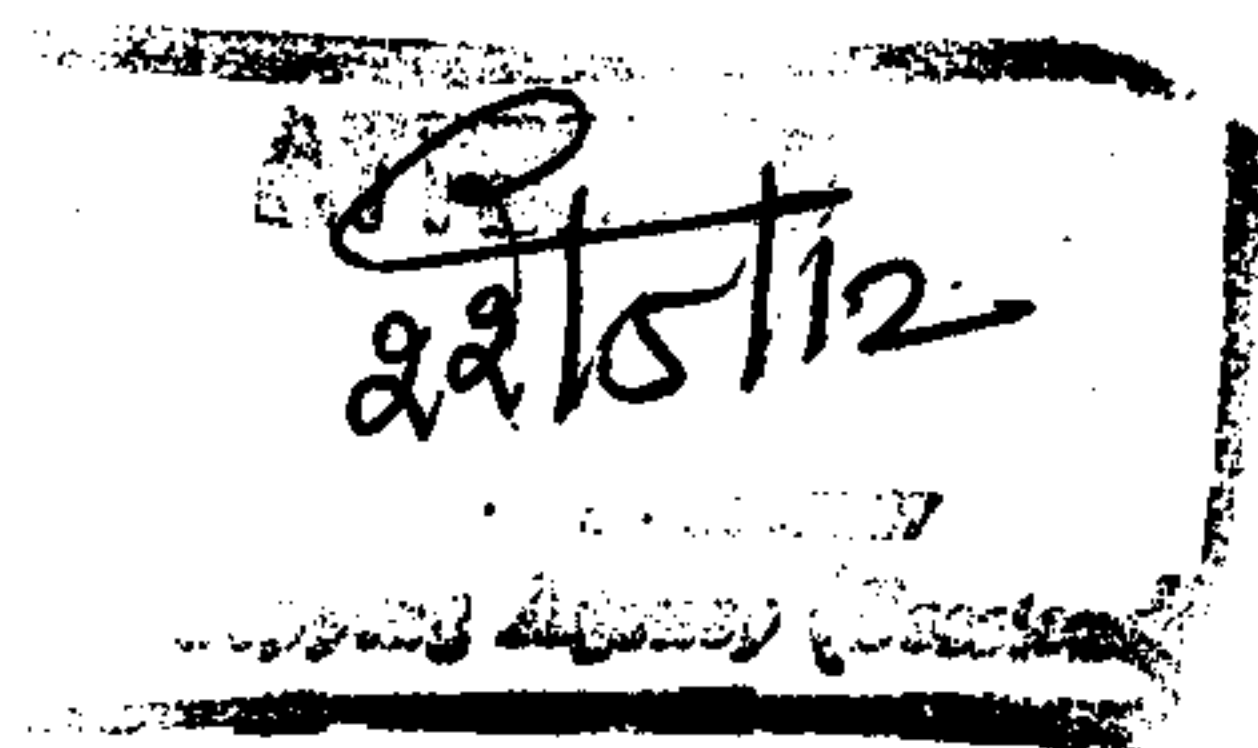
and when they will be apprehended.

File be consigned to record room.

(Pawan Kumar Jain)

Additional Sessions Judge,  
Central/01, THC, Delhi

02.05.2012





SEBI Vs. Samarpan Agro Plantation (I) Ltd. & others

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

Complaint Case No. 30 of 2010  
ID No: 02401R5171532004

**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- 40 021 represented by Ms. Pooja Mirchandani, AGM, SEBI.

**Versus**

1. **SAMARPAN AGRO PLANTATION (I) LTD.**  
a company incorporated under the provisions of Companies Act, 1956 and having its Regd. Office at H. S.1/61, Sector-A, Sitapur Road, Aliganj, Lucknow. U. P.

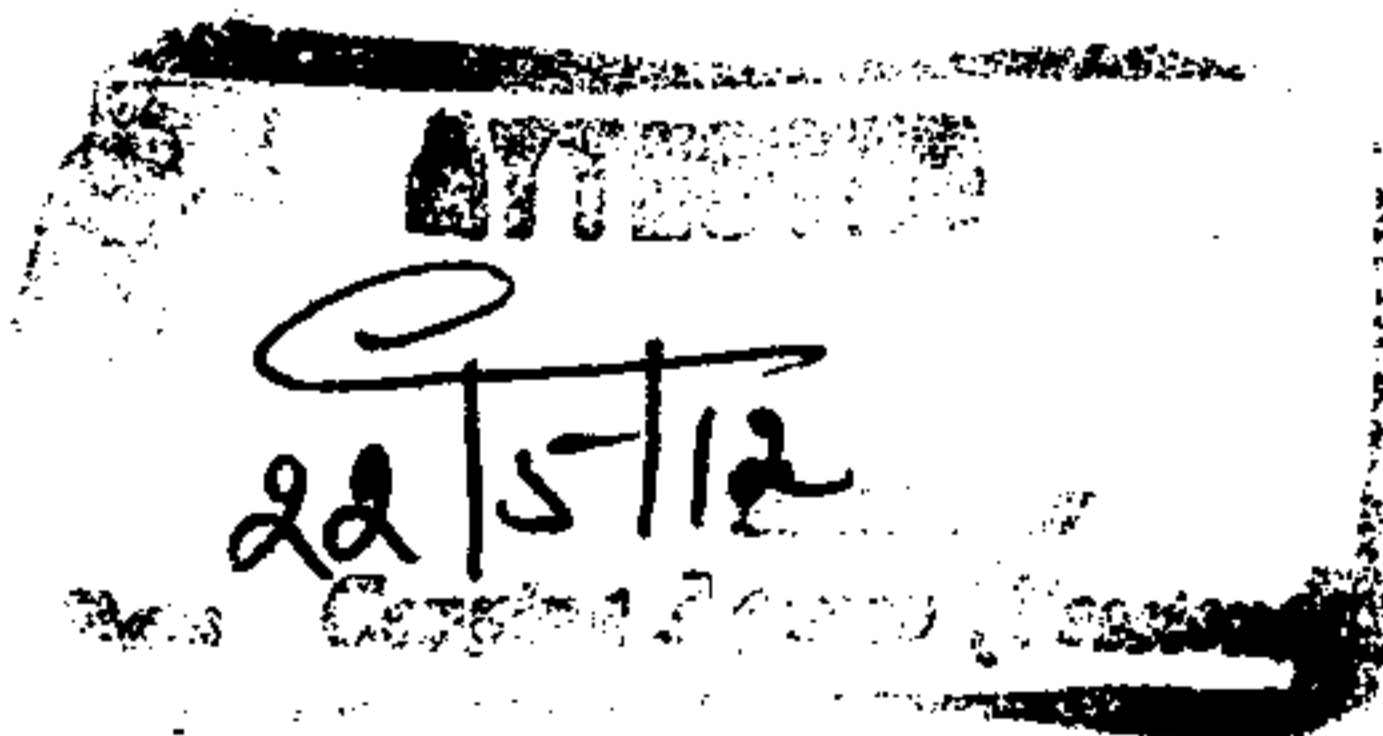
.....Accused no.1

2. **Sh. Lal Ji Singh**  
S/o Sh. U.P.N. Singh  
Director of the Accused no.1  
R/o Kanoongo Pura (South) Bahrich-271801.

.....Accused no.2

3. **Smt. J.P.Singh**  
S/o Sh. U.P.N. Singh  
Director of the Accused no.1  
R/o C-118, Sector-H, Aliganj, Lucknow, UP

.....Accused no.3





**SEBI Vs. Samarpan Agro Plantation (I) Ltd. & others**

4. **Sh. Anil Mishra,**  
S/o Late Sh. Sankata Pd. Mishra  
Director of the Accused no.1  
R/o 600, Lucknow Road, Hardoi, U. P.

.....Accused no.4

5. **Sh. Abdus Salam,**  
S/o Sh. Hakim Abdul Kalam,  
Director of the Accused no.1  
R/o Hamdard Agency, Reti Ka pul  
Gorakhpur, U.P

.....Accused no.5

6. **Sh. P.K. Pandey**  
S/o Sh. D.N. Pandey,  
Director of the Accused no.1  
R/o Village Nibi Dohani, P.O. Sohratgarh,  
Distt. Siddharth Nagar, U.P.

.....Accused no.6

7. **Sh. Mayank Tripathi**  
S/o Sh. Lt. Col. R.S. Tripathi (Retd.)  
Director of the Accused no.1  
R/o 432/15, Old Hyderabad, behind Kalakankar  
Lucknow U.P.

.....Accused no.7

Date of Institution : 14.01.2004  
Date of committal to Session Court : 17.02.2005  
Date of pronouncement of judgment : 02.05.2012

**Present: Sh.Sanjay Mann, Advocate, Counsel for SEBI.**  
**Sh. O.N.Rattanpal, Advocate, counsel for accused**  
**no. 4, 6 & 7**  
**Sh. Rajeev Kumar Bhola, Advocate, counsel for**  
**accused no. 5**

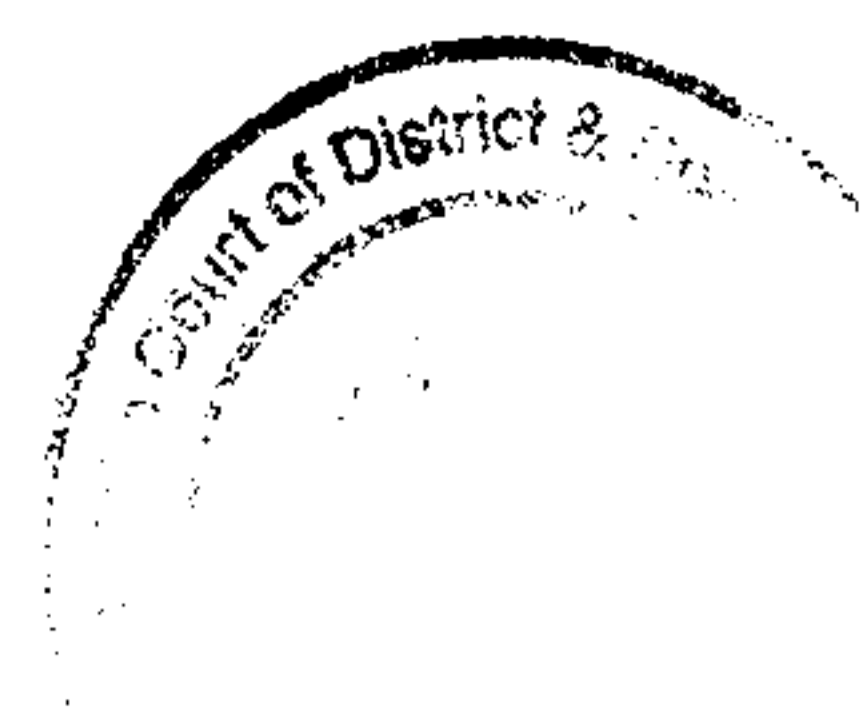


## J U D G M E N T (O R A L) :

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. Seven persons were arrayed as accused in the criminal complaint preferred under Section 200 Cr.P.C., they being Samarpan Agro Plantation (I) Ltd. (hereinafter, "A1" or "the Company Accused"), accused No. 2 Sh. Lal Ji Singh, ("A2"), accused No.3 Sh. J. P. Singh ("A3"), accused No.4 Sh. Anil Mishra ("A4"), accused No.5 Sh. Abdus Saleem ("A5"), accused No.6 Sh. P. K. Pandey ("A6") and accused No.7 Sh. Mayank Tripathi ("A7"). It is alleged that A2 to A7 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

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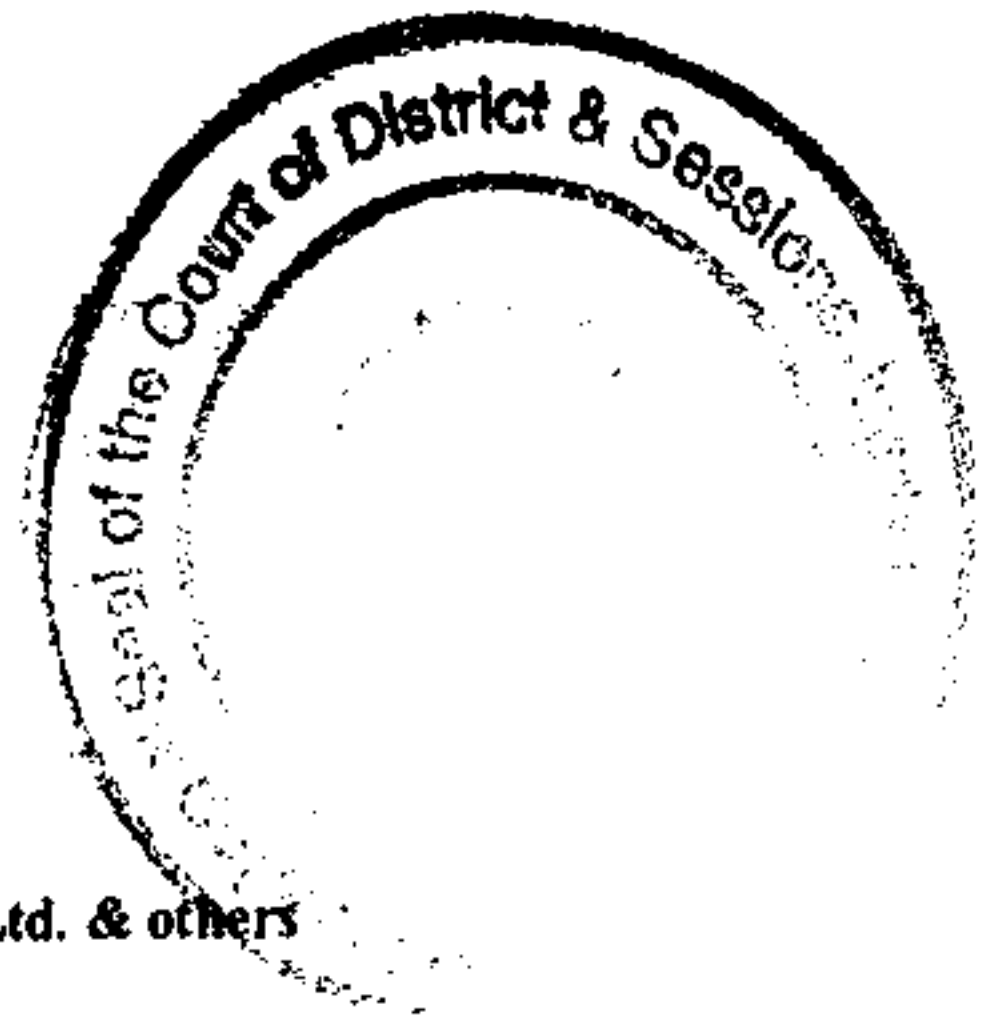


**SEBI Vs. Samarpan Agro Plantation (I) Ltd. & others**

Investment Schemes (CIS) and raised amount approximately ₹ 6 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 was 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 17, 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 May 14, 2009 and July 2, 2009, A2 & A3 were declared proclaimed offenders respectively on account of their non-appearance. Vide order dated November 12, 2009, a notice for the offence punishable under Section 24 read with section 27 of the

22/5/12



SEBI Vs. Samarpan Agro Plantation (I) Ltd. & others

SEBI Act was served upon the A1(company) & A4 to A7 wherein all accused persons pleaded not guilty and claimed trial.

7. To bring home the guilt of accused, complainant has examined only one witness named Ms. Pooja Mirchandani, Asstt. General Manager as CW1. Thereafter, A4 to A7 were examined under Section 313 Cr.P.C. wherein A4 & A7 denied all the evidence led by the complainant and took the plea that they were not the promoters of the company accused and had resigned from the post of director of company accused on March 30, 1998, which was accepted by Sh. J. P. Singh vide letter dated April 5, 1998. A5 & A6 also took the same plea and further submitted that they had resigned from the directorship of company accused and their resignations were accepted by Sh. J. P. Singh vide letter dated December 5, 1997 & December 1, 1997 respectively. All accused persons also submitted that they were not actively involved in the day to day working of the company accused nor any financial dealing on behalf of company accused was done by them. Initially, A4, A6 & A7 wished to lead evidence in their defence but later on counsel for A4, A6 & A7 made a statement in the Court that he did not wish to make defence evidence on behalf of A4, A6 and A7. Accordingly DE stands closed vide order dated April 26, 2012.
8. I have heard arguments advanced by Sh. Sanjay Mann, Advocate, counsel for complainant and Sh. O.N.Rattanpal, Advocate, counsel for A4, A6 & A7 and Sh. Rajeev Kumar Bhola, Advocate, counsel for A5 and perused the record carefully.
9. Learned counsel appearing for A4 & A5 submits that there is

22/5/12



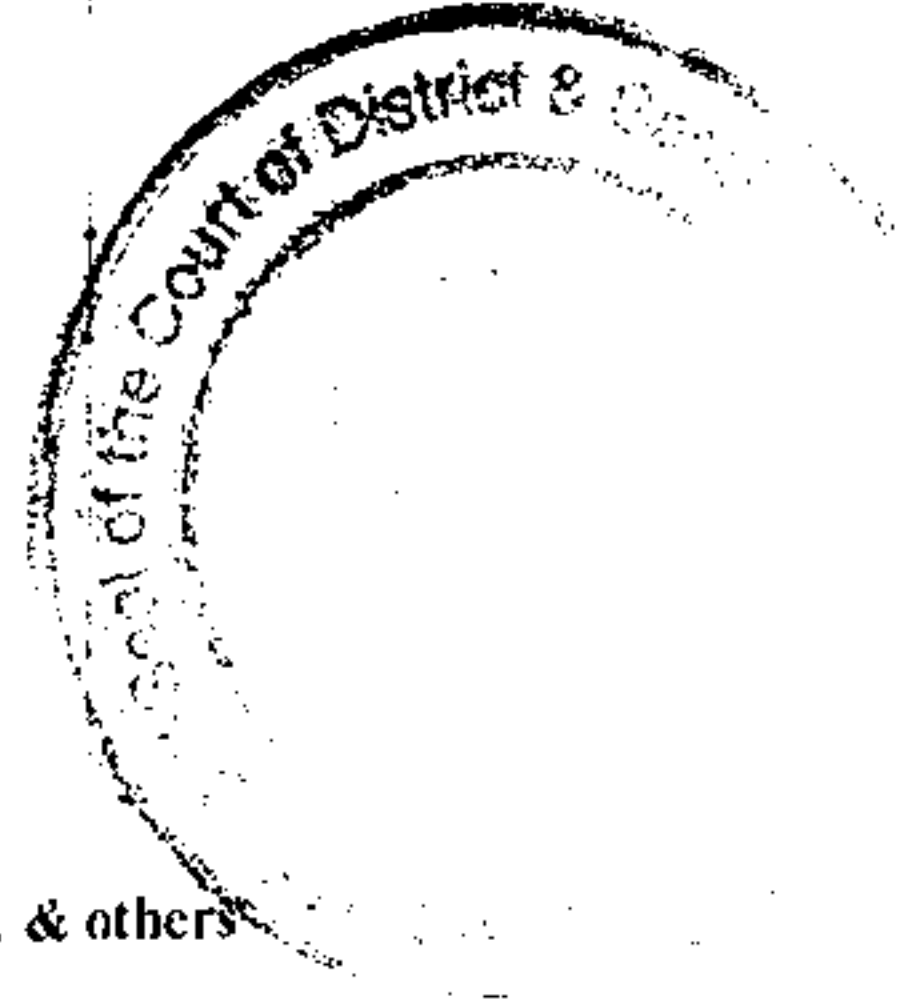
no evidence on record to establish that they were holding any position in the company accused at the time of commission of offence. It is submitted that they were merely subscribers in the company accused. Learned counsel appearing for SEBI fairly conceded that there is no evidence on record to show that A4 & A5 were holding any position in the company accused.

10. **Learned** counsel appearing for A6 & A7 requests for a lenient view and did not argue the matter on merits. Learned counsel appearing for SEBI submits that A6 and A7 were directors in the company accused at the time of mobilizing funds in violation of Section 12(1B) of the SEBI Act.

11. **Before** dealing with the contentions raised by counsel for both the parties, I deem it appropriate to deal with the issue as to whether company accused had violated any provision of law at the time of mobilizing funds or not.

12. It is undisputed fact that company accused was incorporated on September 19, 1994 and this fact is further proved from the Memorandum and Articles of Associations of company accused, which is part of documents Ex. CW1/6. It is further undisputed fact that company accused had sent a letter dated January 13, 1998 which is exhibited as Ex. CW1/6 to the SEBI, intimating the SEBI that company accused had mobilized funds to the tune of ₹ 6,02,995/- till March 31, 1996. From the balance-sheet ending year March 31, 1995, it is clear that company accused had mobilised funds to the tune of ₹ 3,20,708/- upto March 31, 1995. Thereafter, company accused had mobilized

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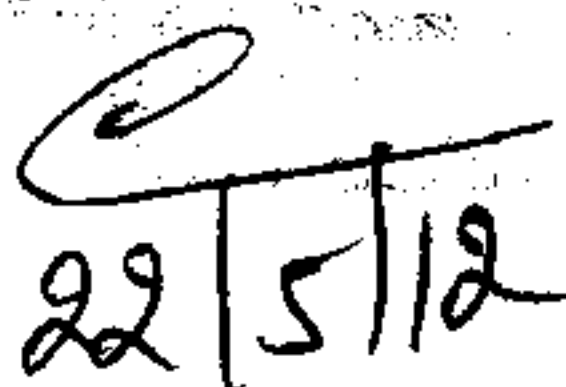
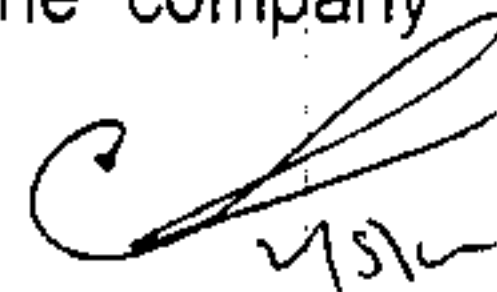


funds to the tune of ₹ 6,02,995/- till March 31, 1996. This establishes that some parts of amount was mobilized during the period 1994-March 31, 1995 whereas ₹ 3 lac was mobilized after March 31, 1995.

**13.** Section 12(1B) was inserted in the Act w.e.f January 25, 1995. As per Section 12(1B) of SEBI Act, no person could sponsor or cause 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 and if any company was carried on any collective investment scheme at the time of insertion of Section 12(1B) of the Act, such company was permitted to continue with the scheme till the notification of the CIS Regulations.

**14.** Admittedly, CIS Regulations were notified on October 15, 1999. In terms of Regulation 5 of the CIS Regulations, such companies were supposed to move an application for seeking registration within a period of two months from the date of notification of CIS Regulations. But admittedly, in the instant case, company accused failed to move any application in terms of Regulation 5. If a company failed to move the application or moved the application but rejected by the SEBI, such company accused was supposed to refund the amount to the investors and was supposed to submit winding up and repayment report with the SEBI on the prescribed formate. Admittedly, company accused did not comply with the Regulation 5 as well as Regulation 73 of CIS Regulations and violation of said Regulations is punishable under Section 24 (1) of SEBI Act.

15. Since, company accused had neither applied for seeking registration of the certificate in terms of Regulation 5 of CIS Regulations nor refunded the amount to the investors nor filed the winding up and repayment report, company accused had violated Regulation 5 (1) and 73 of CIS Regulations. Thus, company accused is guilty for the offence punishable under Section 24(1) of SEBI Act.
16. Now coming to the contention raised by the counsel for accused persons.
17. Perusal of Memorandum and Articles of Associations of company accused reveals that A4 & A5 were mere subscribers in the company accused. There is no iota of evidence to show that they were holding any position in the company accused. Since, there is nothing on record to show that they were holding any position in the company accused, it cannot be said that they were the persons in-charge of, and responsible to, the company accused for the conduct of its business in terms of Section 27 of the SEBI Act.
18. However, perusal of the documents reveals that A6 & A7 were directors in the company accused at the relevant time. Though this fact is not disputed by the accused persons during the course of arguments, yet the same is established from the Form-32, filed by the accused persons during trial, which is part of Ex. CW1/23. Being the directors, they were the persons in-charge of, and responsible to, the company accused for the conduct of its business. Thus, to my mind, they are also liable for the violations committed by the company accused.



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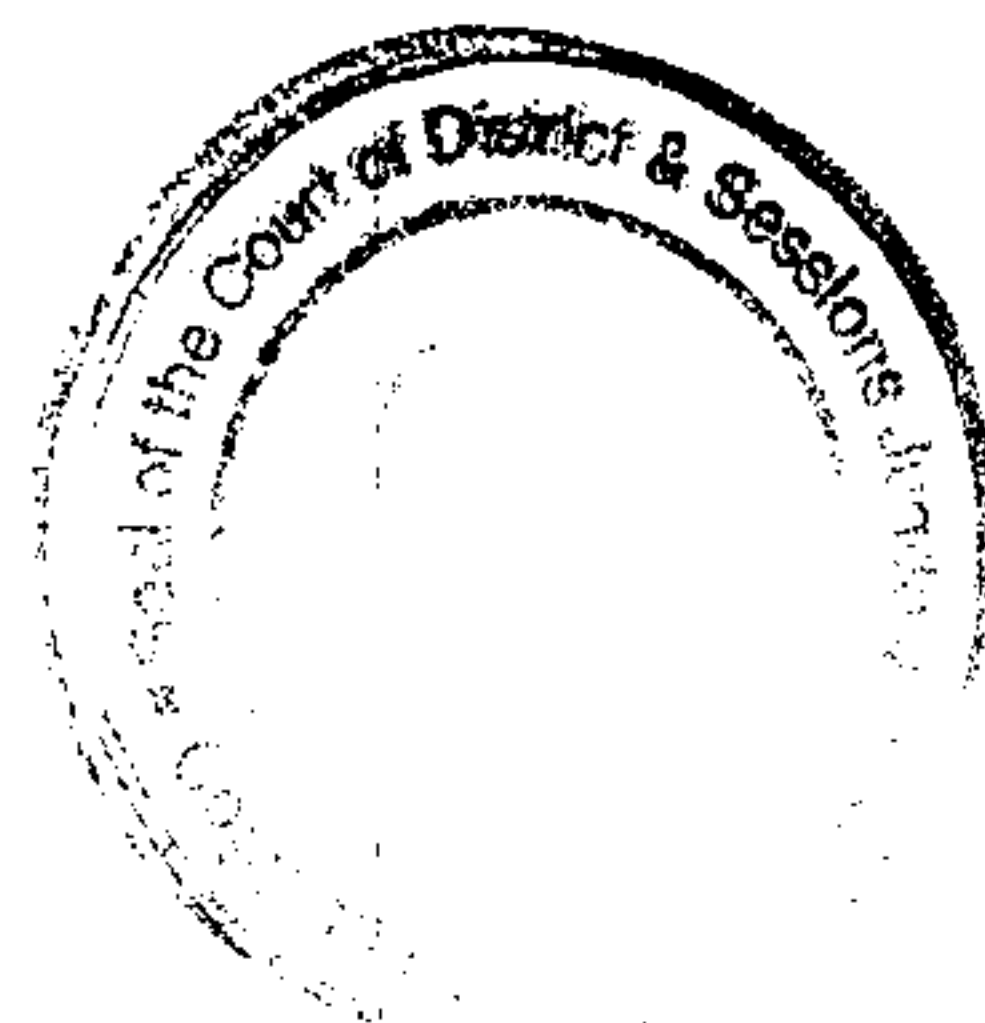
19. Pondering over the ongoing discussion, I am of the opinion that complainant has succeeded to establish beyond the shadow of all reasonable doubts that company accused had mobilized funds in violation of Section 12 (1B) of the SEBI Act and also violated Regulation 5 (1) & 73 of CIS Regulations, which is punishable under Section 24(1) of SEBI Act. Simultaneously, SEBI has also succeeded to establish that A-6 and A7 were the persons in-charge of, and responsible to, the company accused for the conduct of its business at the time of said violations. Thus, I hereby hold A1 i.e. Samarpan Agro Plantation (I) Ltd., A6 P. K. Pandey and A7 Mayank Tripathi guilty for the offence punishable under Section 24 (1) read with Section 27 of the SEBI Act. However, SEBI has failed to prove the guilt of A4 and A5. Thus, I hereby acquit A4 Anil Mishra and A5 Abdus Salam from all the charges.

Announced in the open Court  
on this 2<sup>nd</sup> day of May 2012

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

Copy given to the  
for the court at FOC  
as per the order of the court  
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SEBI Vs. Samarpan Agro Plantation (I) Ltd. & others

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

Complaint Case No. 30 of 2010  
ID No: 02401R5171532004

**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- 40 021 represented by Ms. Pooja Mirchandani, AGM SEBI.

Versus

1. **SAMARPAN AGRO PLANTATION (I) LTD.**  
a company incorporated under the provisions of Companies Act, 1956 and having its Regd. Office at H. S.1/61, Sector-A, Sitapur Road, Aliganj, Lucknow. U. P.

.....Convict no.1

2. **Sh. P.K. Pandey**  
S/o Sh. D.N. Pandey,  
Director of the Accused no.1  
R/o Village Nibi Dohani, P.O. Sohratgarh,  
Distt. Siddharth Nagar, U.P.

.....Convict no. 2

3. **Sh. Mayank Tripathi**  
S/o Sh. Lt. Col. R.S. Tripathi (Retd.)  
Director of the Accused no.1  
R/o 432/15, Old Hyderabad, behind Kalakankar  
Lucknow U.P.

.....Convict no. 3

22/5/12



SEBI Vs. Samarpan Agro Plantation (I) Ltd. & others

Present: Sh.Sanjay Mann, Advocate, Counsel for SEBI.  
Sh. O.N.Rattanpal, Advocate, counsel for convict  
no. 2 & 3

**ORDER ON THE POINT OF SENTENCE (ORAL) :**

1. Vide separate judgment, A1 Samarpan Agro Plantation and A6 P.K.Pandey and A7 Mayank Tripathi have been held guilty for the offence punishable under Section 24(1) read with Section 27 of the SEBI Act.

2. **Learned** counsel appearing for convicts requests for a lenient view on the ground that convicts are law abiding citizens and they are the sole bread earner of their respective family having no criminal antecedents. On the other hand, learned counsel appearing for SEBI requests to impose substantial amount of fine upon the convicts.

3. I have heard counsel for both the parties and perused the record carefully.

4. **Considering** their submissions and quantum of amount involved therein, I am of the view that ends of justice will be met if convicts are burdened with some fine amount. Accordingly, I hereby impose a fine of ₹ 25,000/- each upon convicts in default convict no. 2 & 3 shall further under go simple imprisonment for a period of 15 days for the offence punishable under Section 24 (1) of the SEBI Act.

22/5/12


5. **Fine** amount is paid on behalf of convicts no. 2 & 3. Thus, their surety be discharged. Original documents, if any, be returned to the sureties.

6. **Counsel** for SEBI submits that he will take appropriate steps for realization of fine amount after tracing out the assets of the convict company.

7. **Copy of judgment along with order on the point of sentence**  
be given to the convicts/their counsel free of cost.

8. Since A2 and A3 are proclaimed offenders, file be consigned to record room with direction that the same be revive as and when they will be apprehended.

***Announced in the open Court  
on this 2<sup>nd</sup> day of May 2012***

  
(PAWAN KUMAR JAIN)

**ADDITIONAL SESSIONS JUDGE-01**  
**CENTRAL/THC/DELHI**

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