



THE COURT OF MS. MADHU JAIN, A.C.M.M. TIS HAZARI, DELHI.

COMPLAINT NO. 64/2004

14/01/04

IN THE MATTER OF:

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 New Delhi, represented  
by its Legal Officer/Manager/Asst.  
General Manager Mr. Sharad Bansode.

*64/2004*  
*02/01/2004*

COMPLAINANT

VERSUS

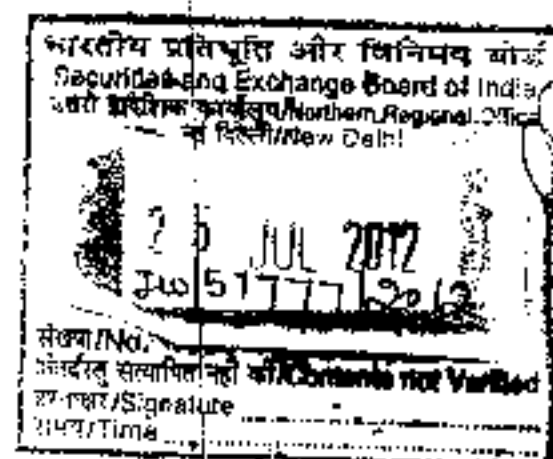
1. STARPLUS FOREST DEVELOPMENT LTD.  
7, 2<sup>nd</sup> Floor, Indira Market,  
Railway Road, Aligarh-202001,  
U.P.

2. Shri. Pratap Singh Verma,  
S/o. Sh. Dal Chand Verma, 40 B.N. Sharma Rd - 201, Sector-6  
R/o. H. No. 1/16, Ghanshyam Puri, Chakrapuri, Aligarh district,  
Aligarh, U.P.

3. Shri. Dharmendra Singh,  
S/o. Late Dori Lal,  
R/o. Moh. Satta, Etmarpur,  
Agra, U.P.

4. Shri. Sardar Singh,  
S/o. Sh. Jamuna Prasad,  
R/o. Village Jagatiya, Post Madaim,  
Distt. Mathura, U.P.

5. Shri. Shilendra Kumar,  
S/o. Sh. Dup Chandra,  
R/o. Village Jagatiya, Post Madaim,  
Distt. Mathura, U.P.



*24/01/04*  
*JKA (PT) R*  
*25/7*  
*ACA (Kater)*

ACCUSED

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

*7* *(P)* *44*





Item No. 9

CC No. 78/10

10.07.2012

Present: Sh. Sanjay Mann, Counsel for the SEBI.  
Accused No. 1 is a company represented by accused No. 2.  
Accused 3 to 5 are in person.  
Sh. A.K. Bansal, Advocate for all the accused.

Vide separate judgment.

All accused persons are held guilty for the offence punishable under Section 24(1) r/w 27 of the SEBI Act.

Renotify the matter for argument on the point of sentence on 13.07.2012.

  
[PAWAN KUMAR JAIN]  
ASJ-01/CENTRAL/DELHI  
10.07.2012





Item no. 9  
CC No. 78/10

13.07.2012

Present: Sh. Sanjay Mann, Advocate, Counsel for SEBI.  
Sh. A.K. Bansal, Advocate, counsel for all convicts

Arguments heard advanced by counsel for parties.

Vide separate order on the point of sentence, convicts are burdened with a fine of ₹ 80,000/- each in default convict no. 2 to 5 shall undergo simple imprisonment for a period of three months for the offence punishable under Section 24(1) of SEBI Act.

Fine amount is paid by all the convicts.

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

File be consigned to record room.

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





SEBI Vs. M/s Star Plus Forest & others

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

Complaint Case No. 78 of 2010  
ID No: 02401R5222192004

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 New Delhi, represented by Ms. Versha Aggarwal, AGM, SEBI.

Versus

1. **STARPLUS FOREST DEVELOPMENT LTD.**  
7, 2<sup>nd</sup> Floor, Indira Market,  
Railway Road, Aligarh-202001,  
U.P.

.....Accused no.1

2. **Sh. Pratap Singh Verma**  
S/o Sh. Dal Chand Verma  
Sh. C/o B. N. Sharma  
R/o 247, Sector-6, Chankyapuri,  
Ahemdabad.

.....Accused no.2

3. **Sh. Dharmendra Singh,**  
S/o Late Dori Lal  
R/o Moh. Satta, Etmarpur,  
Agra, U. P.

.....Accused no.3





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4. **Sh. Sardar Singh**  
S/o Sh. Jamuna Prasad  
R/o Village Jagatiya, Post Madiam,  
Distt. Mathura, U. P.

.....Accused no.4

5. **Sh. Shitendra Kumar,**  
S/o Sh. Dup Chandra,  
R/o Village Jagatiya, Post Madaim,  
Distt. Mathura, U. P.

.....Accused no.5

Date of Institution : 14.01.2004  
Date of committal to Session Court : 14.12.2004  
Date of judgment reserved on : 04.07.2012  
Date of pronouncement of judgment : 10.07.2012

Present: Sh.Sanjay Mann, Advocate, Counsel for SEBI.  
Sh. A.K.Bansal, Advocate, counsel for all accused

## J U D G M E N T :

1. This criminal complaint was preferred by the Securities & Exchange Board of India (hereinafter referred to as "SEBI" or "the complainant"), on January 14, 2004 in the Court of Additional Chief Metropolitan Magistrate (ACMM), alleging violation of the provisions of Section 12 (1B) of Securities & Exchange Board of India Act, 1992 (hereinafter, "the SEBI Act") and Regulation Nos. 5(1) read with 68(1), 68(2), 73 and 74 of the Securities & Exchange Board of India (Collective Investment Schemes) Regulations, 1999 (hereinafter

*10/7/12*





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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. Five persons were arrayed as accused in the criminal complaint preferred under Section 200 Cr.P.C., they being Starplus Forest Development Ltd. (hereinafter, "A1" or "the Company Accused"), accused No. 2 Sh. Pratap Singh Verma, ("A2"), accused No.3 Sh. Dharmendra Singh ("A3"), accused No.4 Sh. Sardar Singh ("A4") and accused No.5 Sh. Shilendra Kumar ("A5"). It is alleged that A2 to A5 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 ₹ 0.19 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.
4. Cognizance on the complaint was taken by the learned

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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 December 14, 2004 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 January 31, 2008, 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 A5 wherein all accused persons pleaded not guilty and claimed trial. Since A2 is representing company accused, he has also responded the notice on behalf of company.
7. To bring home the guilt of accused, complainant has examined only one witness named Ms. Versha Aggarwal, Asstt. General Manager as CW1. Thereafter, A2 to A5 were examined under Section 313 Cr.P.C. wherein A2 admitted the documents Ex. CW1/3, Ex. CW1/4, Ex. CW1/6 and Ex. CW1/7 and denied all other evidence led by the complainant. He also admitted his directorship in the company accused but took the plea that company accused had refunded the entire amount to the investors along with interest @ 10 % p.a. and company accused had also filed WRR with the SEBI. He further submitted that there was no complaint of any of the investors

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**ATTESTED**  
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Examiner  
Copying Agency (Sessions)



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with the SEBI and company accused had not violated any provisions of SEBI Act or CIS regulations. Though he submitted that original receipt of WRR was lost in transit, yet submitted that company accused had preserved the photocopy of the said receipt. While A3 to A5 submitted that though they were directors in the company accused but submitted that they were not holding any position in the company accused and were not participating in day to day affairs of the company accused and had no knowledge whether company accused had raised any fund or not or whether company accused had violated any provisions of SEBI Act or CIS Regulations. They further submitted that company accused had not invited them in any of the meetings. To prove their innocence, accused persons have examined as many as following nine witnesses:-

DW1	Sh. Sunil Kumar, investor
DW2	Sh. Hari Singh, investor
DW3	Sh. M. K. Sharma, investor
DW4	Sh. Dhirender Kumar, investor
DW5	Sh. Manoj Sasodia, investor
DW6	Sh. Pankaj Kumar, Sr. Technical Asstt., ROC
DW7	Sh. Manoj Choudhay, investor
DW8	Sh. Hoti Lal, investor
DW9	Sh. Pratap Singh, (A2)

8. Learned counsel appearing for accused vehemently contended that A3 to A5 were the sleeping directors in the company accused, thus they were not liable for day to day affairs of the company accused, thus they cannot be held liable for the violation

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allegedly committed by the company accused. It was further submitted that though company accused had raised funds without obtaining necessary certificate of registration, yet company accused had refunded the amount to the investors, thus it was contended that company accused had not committed any offence under SEBI Act.

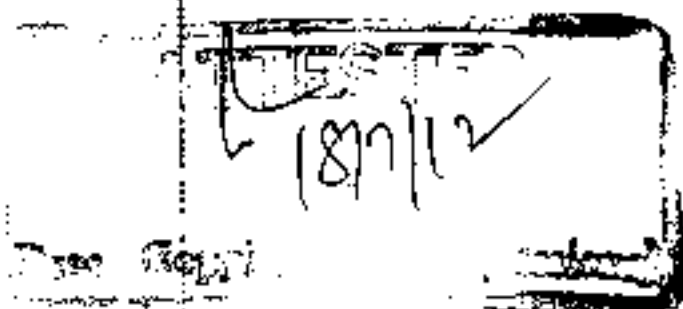
9. On the other hand, learned counsel appearing for SEBI refuted the said contentions by arguing sagaciously that company accused was incorporated on October 17, 1996, thus in terms of Section 12 (1B) of the SEBI Act, company accused was not supposed to raise any fund unless company accused had obtained a certificate of registration. It was submitted that company accused had not only violated mandatory provisions of Section 12(1B) of the SEBI Act but also violated the Regulations of CIS Regulations as company accused failed to move any application for seeking registration. It was submitted that company accused had not filed the winding up and repayment report till date.

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

11. Firstly, I will prefer to deal with the issue as to whether company accused had violated the provisions of SEBI Act at the time of mobilizing funds or not?

12. It is undisputed fact that company accused was incorporated

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on October 17, 1996. Moreover, this fact is proved from the Memorandum and Articles of Associations of company accused which is part of Ex CW1/4 wherein it is mentioned that company accused was incorporated on October 17, 1996 and had commenced its business w.e.f October 18, 1996.

**13.** Vide letter dated January 12, 1998 (Ex. CW1/3), company accused had furnished certain information to the SEBI along with audited balance-sheet for the ending year March 31, 1997. Perusal of the said balance-sheet reveals that company accused had mobilized funds to the tune of ₹ 18,98,569/- till March 31, 1997.

**14.** Section 12 (1B) was inserted in the Statute w.e.f January 25, 1995. As per Section 12(1B) of the 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. Under proviso to the said Section, relaxation has been provided to certain companies to obtain such certificate till the regulations are notified provided the company was operating collective investment scheme before the insertion of Section 12 (1B). In other words, companies which were operating collective investment schemes before the insertion of Section 12 (1B) in the Act i.e. January 25, 1995, such companies were permitted to continue with such schemes till the notification of Regulations. Since, company accused was incorporated only on October 17, 1996, question of operating schemes prior to that date does not arise. It is admitted case of accused that company accused had not obtained a certificate of registration in terms of

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mandatory provisions of Section 12(1B) of SEBI Act. Since, company accused was not supposed to raise any fund through collective investment schemes unless company accused obtained a certificate of registration, thus company accused had violated Section 12(1B) of the Act by raising funds to the tune of ₹ 18,98,569/- without obtaining a certificate of registration.

15. It undisputed fact that Collective Investment Schemes Regulations were notified on October 15, 1999. As per Regulation 5 of the CIS Regulations, if any company was operating any scheme at the time of notification of said Regulations, such company was supposed to move an application for seeking registration within a period of two months from the date of notification of CIS Regulations. Admittedly, in the instant case, company accused had not moved any such application. Once company accused failed to move an application in terms of Regulation 5, company accused was bound to refund the amount to the investors and was supposed to submit winding up and repayment report with the SEBI on the prescribed formate in terms of Regulation 73 of CIS Regulations, which is punishable under Section 24 (1) of SEBI Act.

16. Now coming to the next question as to whether all accused are liable for the above violation or not?

17. Learned counsel appearing for accused persons contended that A2 was the Managing Director of the company accused, thus he is liable for the above violations, however, A3 to A5 were the sleeping directors and were not involved in day to day affairs of the company

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accused, thus they are not liable for the violations committed by the company accused. In support of his contention, he relied upon the judgment titled **National Small Industries Corporation Ltd. vs. Harmeet Singh Paintal & Anr. 2010 (I) JCC (NT) 86** wherein it was held :

**Para 24:**

"Section 291 of the Companies Act provides that subject to the provisions of that Act, the Board of Directors of a company shall be entitled to exercise all such powers, and to do all such acts and things, as the company is authorized to exercise and do. A company, though a legal entity, can act only through its Board of Directors. The settled position is that a Managing Director is prime facie in-charge of and responsible for the company's business and affairs and can be prosecuted for offences by the company. But insofar as other Directors are concerned, they can be prosecuted only if they were in-charge of and responsible for the conduct of the business of the company. A combined reading of Sections 5 and 291 of Companies Act, 1956 with the definitions in clauses 24, 26, 30, 31 and 45 of Section 2 of that Act would show that the following persons are considered to be the persons who are responsible to the company for the conduct of the business of the company:

- (a) the Managing Director/s;
- (b) the whole-time Director/s;
- (c) the Manager;
- (d) the Secretary;
- (e) any person in accordance with whose directions or instructions the Board of Directors of the company is accustomed to act;
- (f) any person charged by the Board of Directors with the responsibility of complying with that provision; Provided that the person so charged has given his consent in this behalf to the Board;
- (g) where any company does not have any of the officers specified in clauses (a) to (c), any





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director or directors who may be specified by the Board in this behalf or where no director is so specified, all the directors: Provided that where the Board exercises any power under clause (f) or clause (g), it shall, within thirty days of the exercise of such powers, file with the Registrar a return in the prescribed form. But if the accused is not one of the persons who falls under the category of persons who are responsible to the company for the conduct of the business of the company then merely by stating that he was in-charge of the business of the company or by stating that he was in-charge of the day-to-day management of the company or by stating that he was in-charge of, and was responsible to the company for the conduct of the business of the company, he cannot be made vicariously liable under Section 141(1) of the Act. To put it clear that for making a person liable under Section 141(2), the mechanical repetition of the requirements under Section 141(1) will be of no assistance, but there should be necessary averments in the complaint as to how and in what manner the accused was guilty of consent and connivance or negligence and therefore, responsible under sub-section (2) of Section 141 of the Act."

18. In the instant case, it is not disputed that A3 to A5 were not the directors in the company accused. The only defence taken by the learned defence counsel is that A3 to A5 were the sleeping directors in the company accused. Perusal of Articles of Associations of company accused which is part of Ex. CW1/4 reveals that name of A2 to A5 are mentioned in the Articles of Associations as the first directors of the company accused. Moreover, A2 to A5 also admitted in their statement recorded under Section 313 Cr.P.C, that they were directors in the company accused.

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19. Under clause 125 of Articles of Associations of company accused, it is stated that only Board of Directors have power to borrow the money. Board of Directors was comprising of all the accused persons. In other words, it was the decision of all the directors to raise funds through various collective investment schemes. Once it is established that only Board of Directors was competent to borrow the money or raise funds, how can directors escape from their liabilities just by simply taking the plea that they were not involved in the day to day affairs of the company accused. In the instant case, the term 'business' should be construed in respect of the business involved in the instant case. In the instant case, company accused raised funds from the general public through various collective investment schemes violating the provisions of SEBI Act and the decision of raising funds was taken by the Board of Directors comprising of all the accused persons. As per the Articles of Associations of company accused, Managing Director was not competent to raise funds unless the Board of Directors takes a decision in this regard.

20. Under Section 27 (2) of the SEBI Act, A3 to A5 could take plea that they were not the part of Board of Directors when the decision of raising funds was taken by the Board of Directors. Similarly, they could also take a plea that they had raised the objections and gave their dissent opinion when the Board of Directors had taken the decision to raise funds in violation of provisions of SEBI Act. But during trial, A3 to A5 had not taken any such plea. Even they did not deem it appropriate to appear in the witness box. No doubt, DW9 (A2) deposed that A3 to A5 were sleeping directors, except the

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said bald assertion there is no other evidence on record to establish that A3 to A5 were not part of the Board of Directors when decision was taken to raise funds in violation of mandatory provisions of SEBI Act. Thus, to my mind, the deposition of DW9 (A2) is not sufficient to exonerate A3 to A5 from their liabilities.

21. DW1 to DW5 & DW 7 and DW8 are investors in the company accused. They categorically deposed that they had invested amount in the company accused, however simultaneously they also deposed that they had received their amount along with interest. Similarly, DW9 (A2) also deposed that the company accused had refunded the amount to the investors and has filed a register of the investors showing that the company accused had refunded the amount to the investors. The copy of register is exhibited as Ex. DW9/1. Besides that he had also filed 17 affidavits of the investors to show that they had received the amount.

22. I do not find any substance in the contention of learned defence counsel that mere fact that company accused had refunded the amount to the investors, company accused had not committed any offence. To my mind, company accused had committed the offence first time when it generated the funds during the year 1996-1997 without obtaining requisite certificate of registration. Thereafter, company accused again violated the provisions of SEBI Act when company accused failed to seek registration of certificate, thereafter failed to submit winding up and repayment report. Refunding of amount to the investors may be a mitigating factor, which may be considered at the time of determining the sentence but is not sufficient

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to exonerate the accused persons from their liabilities.

23. Since A2 was the Managing Director of company accused at the time of above violations, thus he is also liable for the violations committed by the company accused.

24. Pondering over the ongoing discussion, I am of the considered opinion that complainant has succeeded to establish beyond the shadow of all reasonable doubts that company accused had mobilized funds through various collective investment schemes 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 A2 to A5 were the directors of the company accused, thus being the directors, they were 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 company accused i.e. M/s Star Plus Forest ("A1"), accused No. 2 Sh. Pratap Singh Verma, ("A2"), accused No.3 Sh. Dharmendra Singh ("A3"), accused No.4 Sh. Sardar Singh ("A4") and accused No.5 Sh. Shilendra Kumar ("A5") guilty for the offence punishable under Section 24(1) of SEBI Act.

Announced in the open Court  
on this 10<sup>th</sup> day of July, 2012

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

Cert given to the Court  
on 10th July 2012

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

Complaint Case No. 78 of 2010  
ID No: 02401R5222192004

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 New Delhi, represented by Ms. Versha Aggarwal, AGM, SEBI.

Versus

1. **STARPLUS FOREST DEVELOPMENT LTD.**  
7, 2<sup>nd</sup> Floor, Indira Market,  
Railway Road, Aligarh-202001,  
U.P.

.....Convict no.1

2. **Sh. Pratap Singh Verma**  
S/o Sh. Dal Chand Verma  
Sh. C/o B. N. Sharma  
R/o 247, Sector-6, Chankyapuri,  
Ahemdabad.

.....Convict no.2

3. **Sh. Dharmendra Singh,**  
S/o Late Dori Lal  
R/o Moh. Satta, Etmarpur,  
Agra, U. P.

.....Convict no.3

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ATTES

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4. **Sh. Sardar Singh**  
S/o Sh. Jamuna Prasad  
R/o Village Jagatiya, Post Madiam,  
Distt. Mathura, U. P.

.....Convict no.4

5. **Sh. Shilendra Kumar,**  
S/o Sh. Dup Chandra,  
R/o Village Jagatiya, Post Madiam,  
Distt. Mathura, U. P.

.....Convict no.5

**Present:** Sh.Sanjay Mann, Advocate, Counsel for SEBI.  
Sh. A.K.Bansal, Advocate, counsel for all convicts

### **ORDER ON THE POINT OF SENTENCE:**

1. Vide separate judgment dated July 10, 2012, A1 i.e M/s Star Plus Forest ("A1"), accused No. 2 Sh. Pratap Singh Verma. ("A2"), accused No.3 Sh. Dharmendra Singh ("A3"), accused No.4 Sh. Sardar Singh ("A4") and accused No.5 Sh. Shilendra Kumar ("A5") have been held guilty for the offence punishable under Section 24 (1) of the SEBI Act.

2. Learned counsel appearing for convicts requests to take a lenient view on the grounds that convicts are the law abiding citizens and sole bread earner of their respective families. It is further submitted that they have no criminal antecedent. Learned counsel for





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convicts submits that company accused had refunded all the amount to the investors and during the trial company accused had produced the register of investors showing that all the amount had been refunded to the investors.

3. Per contra learned counsel appearing for SEBI requests for some substantial punishment on the ground that the company accused had not filed the winding up and repayment report and company accused had mobilized huge amount to the tune of ₹ 18,98,569/- from general public.

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. No doubt, company accused had mobilized funds to the tune of ₹ 18,98,569/- in violation of provisions of SEBI Act and also violated regulations of CIS Regulations. However, during trial, company accused had led sufficient evidence to show that the company accused had refunded the amount to the investors. Even counsel appearing for SEBI fairly conceded that company accused is one of the few companies, which had produced the investors register during trial to establish that company accused had refunded the amount to the investors. Thus, subsequent conduct of the company accused and its directors is a relevant mitigating factor to take a lenient view against the convicts.





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6. Keeping in view of the above discussion, I am of the considered opinion that ends of justice will be met, if convicts be burdened with some fine amount. Accordingly, I hereby impose a fine of ₹ 80,000/- upon each convict in default convict no. 2 to 5 shall undergo simple imprisonment for a period of three months for the offence punishable under Section 24(1) of SEBI Act.
6. Fine amount is paid by all the convicts.
7. Copy of judgment along with order on the point of sentence be given to the convicts/their counsel free of cost.
8. File be consigned to record room.

Announced in the open Court  
on this 13<sup>th</sup> day of July, 2012

  
(RAJAN KUMAR JAIN)

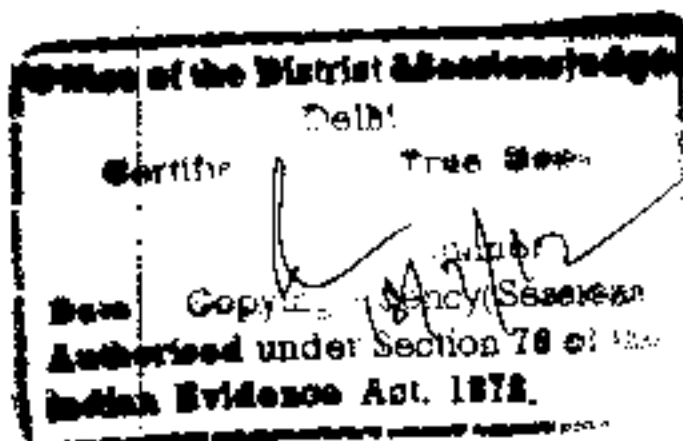
ADDITIONAL SESSIONS JUDGE-01  
CENTRAL/THC/DELHI

*Copy given to the Convict  
in open Court at 12.00*

*13/7/12*

*Received  
by the  
Court Clerk (A-1)  
13/7/2012*

CC No. 78/10



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