

IN THE COURT OF CHIEF METROPOLITAN MAGISTRATE,
TIS HAZARI COURTS, DELHI.

CC NO. 2003

12/3
15/12/03

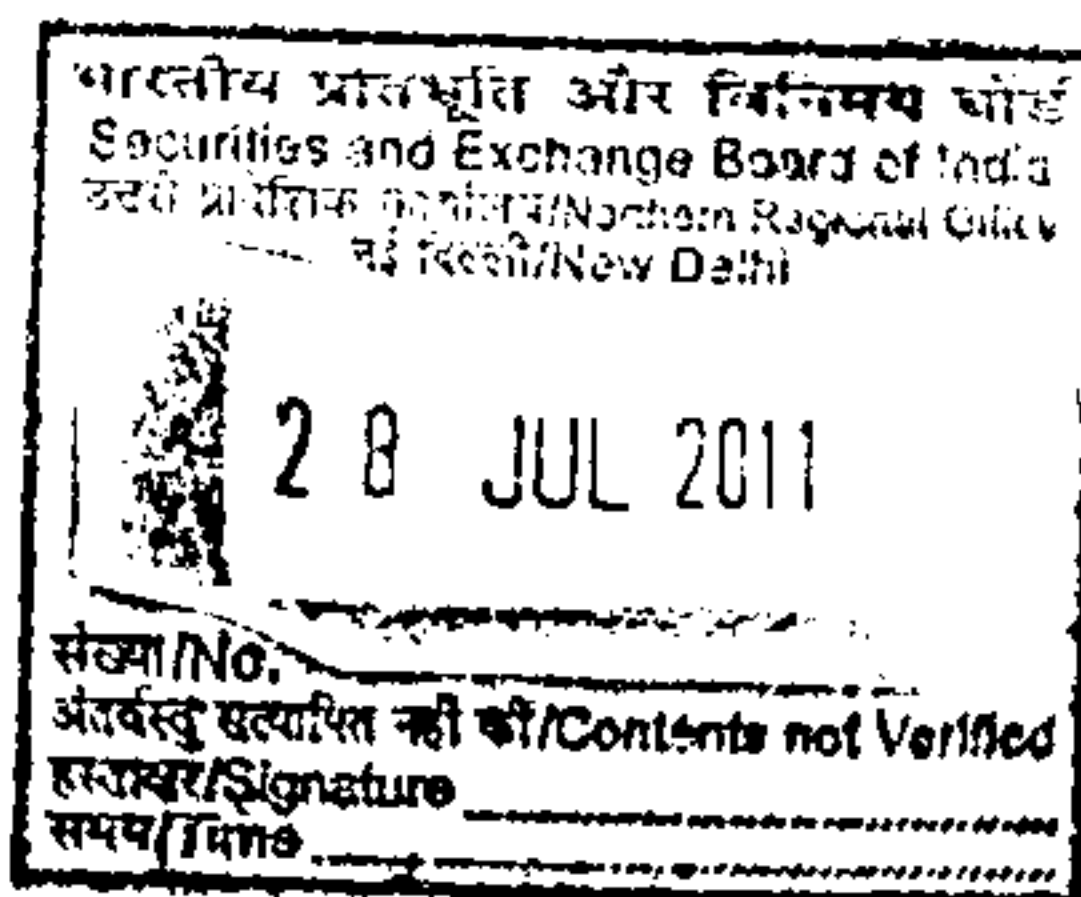
IN THE MATTER OF:

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 Rajendra Place,
New Delhi represented by its Asst. General
Manager, Mr.JYOTI JINDGAR.

...COMPLAINANT

VERSUS



1. M/s ABC Plantation Ltd.
Having its Resgitered Office at
379, Ambay Complex,
Hanuman Mandir Market
Munirka, New Delhi 110 067.

ALSO AT

138 B, Munirka Village
New Delhi 110 067.

ALSO AT

136 A, Sector 9,
New Vijay Nagar, Ghaziabad.

2. Shri Tara Dutt Fulara (Director/Promoter) *Adgr. given by P/s*
S/o Shri B.D.Fulara
143, Old Campus, JNU,
New Delhi 110 067. *view - Patas, PS - Lani Khedi*
Dist - Alwar, Utranchal

3. Sh. Bhawati Prasad Singh *atogwati*
(Director/Promoter) *3 Bhagwati Prasad*
S/o Shri Hakin Singh *3/10/06 Hakin Singh*
H-936, Sangam Vijay, New Delhi 110 062. *R/o C-797 Sangamvijay*
New Delhi-110062

4. Shri Ravi (Director/Promoter)
S/o Shri Munshi Ravi,
Q-706, Seva Nagar,
New Delhi 110 003.

5. Shri Satya Prakash Gupta
(Director/Promoter)
S/o Shri Binay Bhushan Gupta,
E-109, Mahanadi, JNU,
New Delhi 110 067.

6. Shri Umakant Sharma (Director/Promoter)
S/o Shri R.P.Sharma
H-307, Sewa Nagar, New Delhi 110 03.

ATTESTED

Examiner

EX CW 1/2
AST, Delhi (Central)
12.05.2011

PO

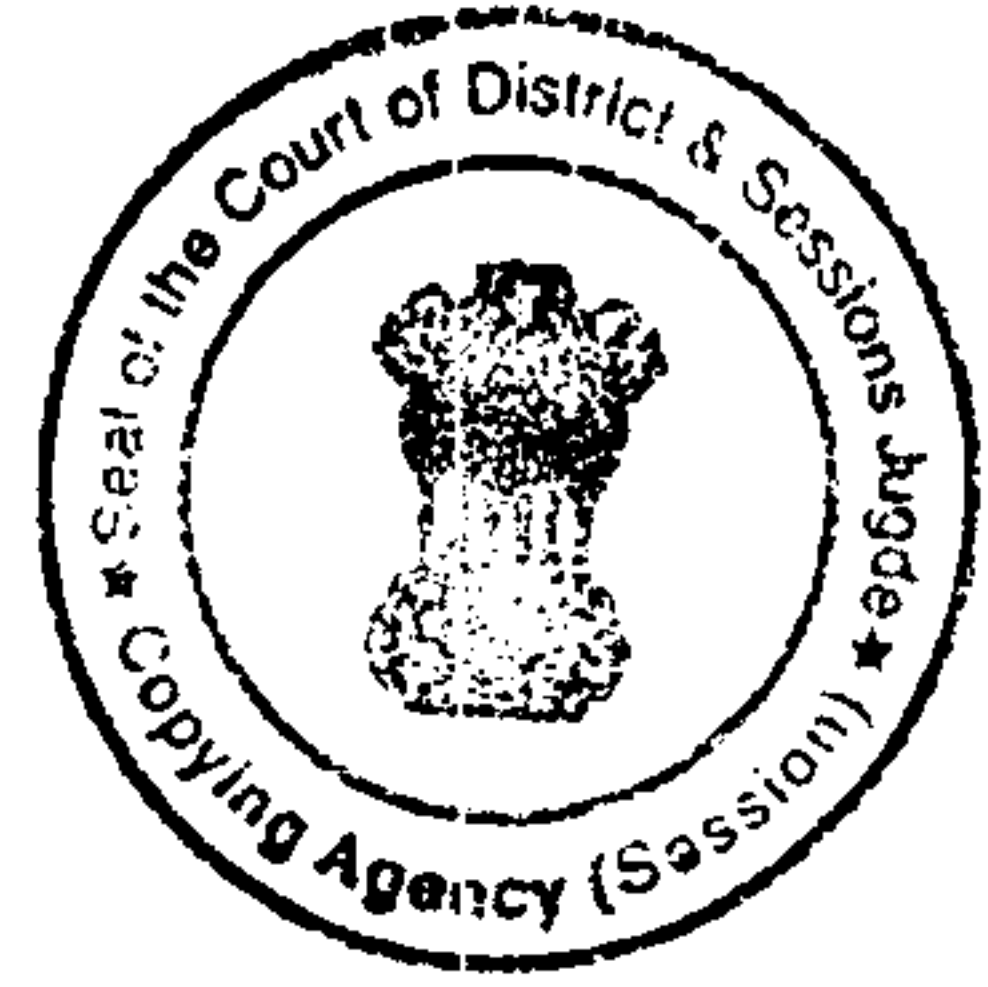
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CC No. 37/10

Item no. 3

18.07.2011.

Present: Sh. Sanjay Mann alongwith Ms. Renu Sharma, Advocates, Counsel for the complainant, SEBI. Accused no.1 is company and represented by Accused No. 3. Accused No.2, 5, 8 & 9 are PO vide order dated 04.09.09, 14.7.06, 14.12.2006 & 08.09.06 respectively. Sh. Ashish Arya, Counsel for all accused persons.

The matter is listed for cross examination of CW1.

CW1 is present, crosss examined and discharged.

Statement of accused persons are recorded separately under Section 313 Cr.P.C in which they refused to lead evidence in their defence.

Arguments heard advanced by counsel for both the parties, perused the record carefully and gave my thoughtful consideration to their contentions.

Vide separate judgment (dated 18.07.2011), A1 i.e. company accused, A3, A4 & A6 have been held guilty for the offence punishable under Section 24 (1) read with Section 27 of the SEBI Act. While A7 has been acquitted from the charges levelled against him.

Arguments heard advanced by counsel for both the parties,





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SEBI Vs. ABC Plantation Ltd. & others

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

**Complaint Case No.37/10
ID No: 02401R0230382003**

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 Rajendra Place, New Delhi and represented by Ms. Deepika Jaggi, Manager, SEBI

.....Complainant

Versus

1. **M/S ABC Plantation Ltd.**, having its registered office at 379, Ambay Complex, Hanuman Mandir Market, Munirka, New Delhi.

Aslo at:

138 B, Munirka Village, New Delh-110 067.

Aslo at:

138 A, Sector-9, New Vijay Nagar, Ghaziabad.

.....Accused No.1

2. **Sh. Tara Dutt Fulara (Director/Promoter)**,
S/o Sh. B. D. Fulara,
143, Old Campus, JNU, New Delhi.

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9. Sh. Haridaya Kumar Mahakul (Director/Promter)
135, Mohamad Pur. New Delhi-110 066.

.....Accused No.9

Date of Institution : 15.12.2003

Date of pronouncing the judgment : 18.07.2011

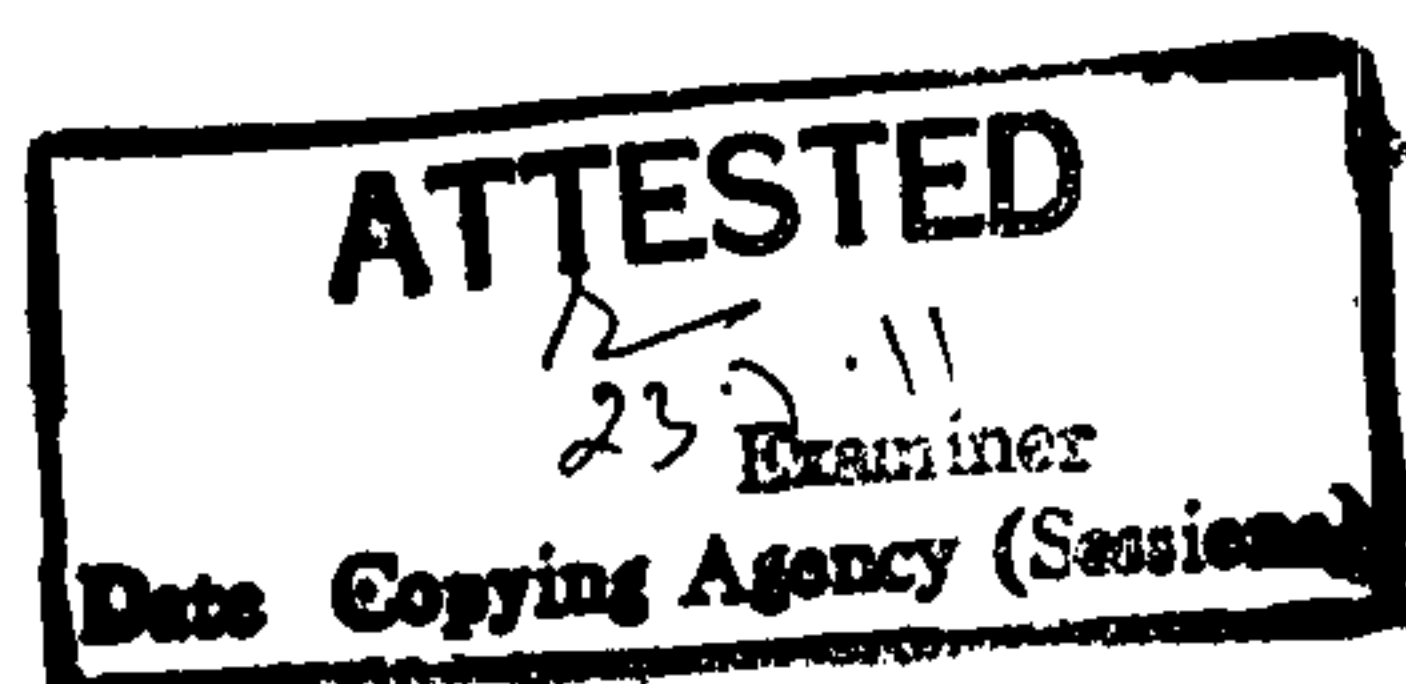
Present: Sh. Sanjay Mann alongwith Ms. Renu Sharma,
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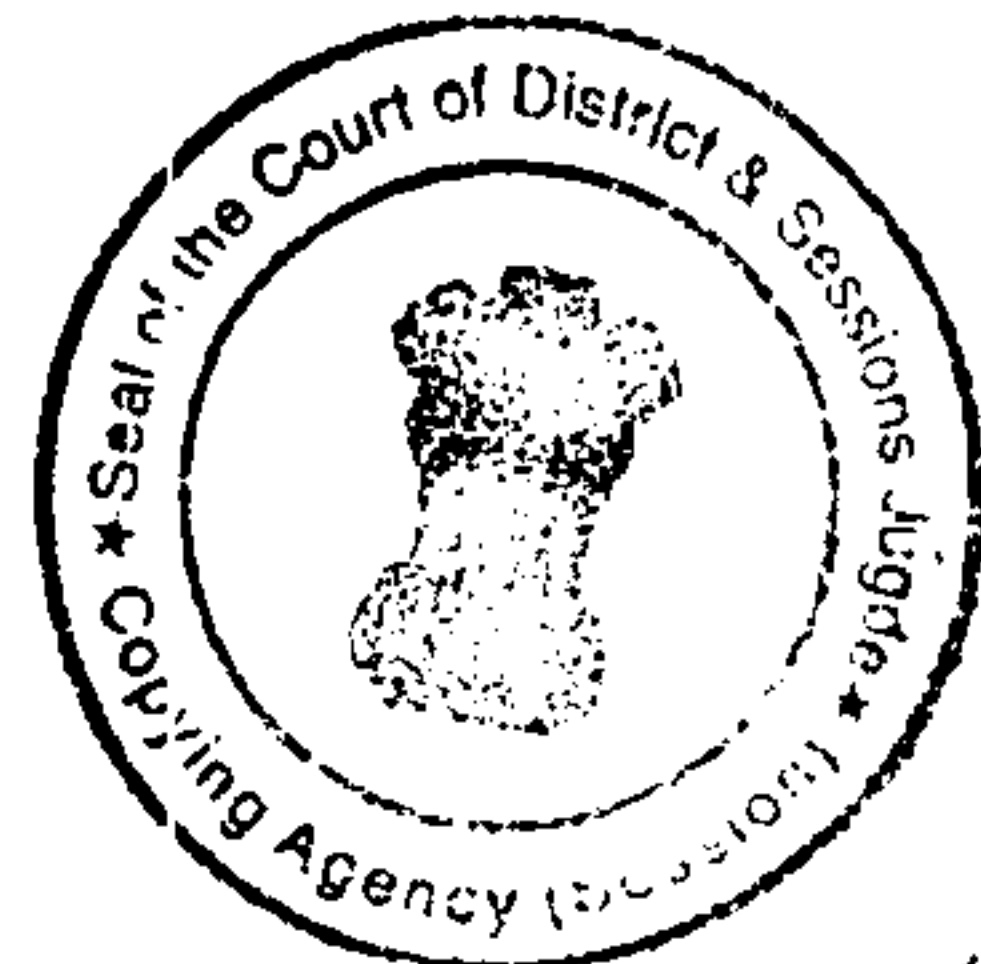
J U D G M E N T : (O R A L)

1. This criminal complaint was preferred by the Securities & Exchange Board of India (hereinafter referred to as "SEBI" or "the complainant"), on 15.12.2003 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 &

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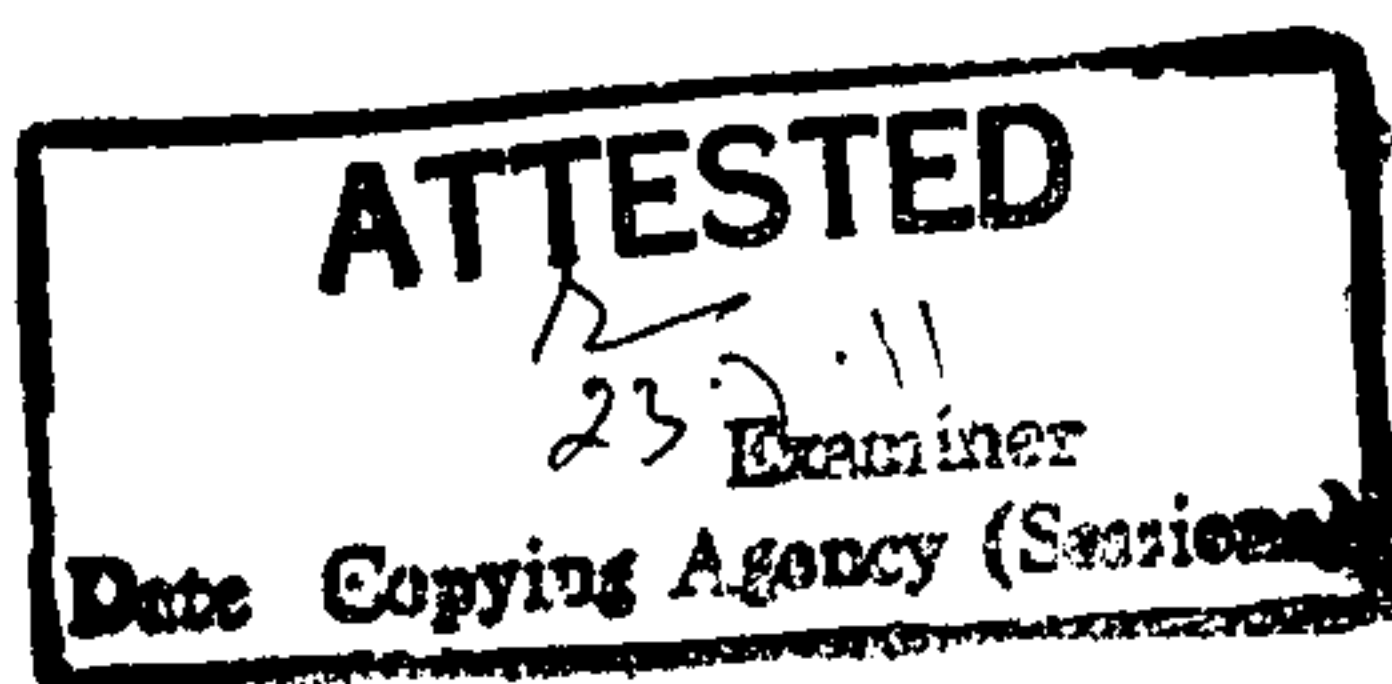
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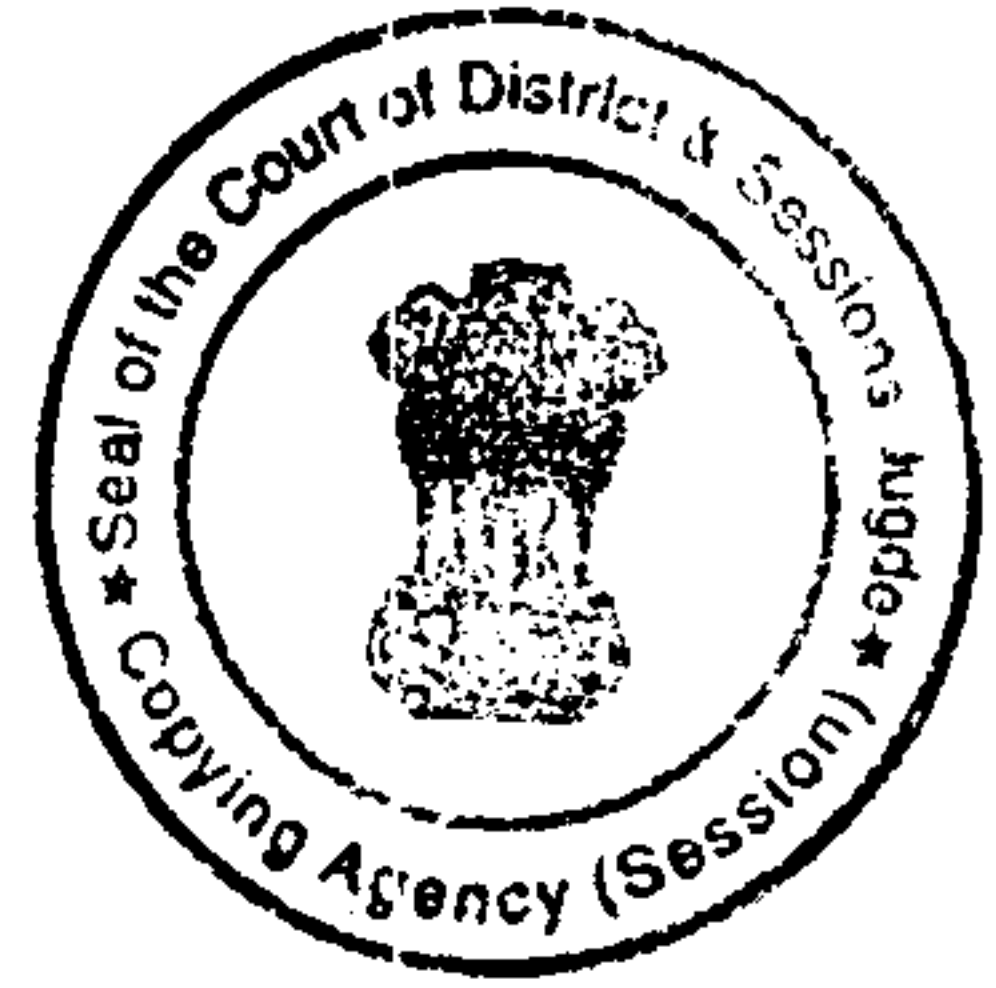
provisions contained in Section 12 (1B) of the SEBI Act. It is also alleged that after coming into force of the CIS Regulations and in spite of public notice dated 18.12.1997, the accused persons had failed to get the Collective Investment Scheme registered with SEBI or to wind up the said scheme or 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 15.12.03 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. 24.11.02, pursuant to Administrative Directions of Hon'ble High Court, under orders of the Ld. Distt. & Sessions Judge, this case was transferred on 05.02.2005 from the Court of Ld. ACMM to the Court of Sessions, then presided over by Ms. Asha Menon, the then Addl. Sessions Judge, Delhi.
6. Vide order dated 14.7.2006, 8.9.2006, 14.12.06 & 04.09.09 A5, A8, A9 & A2 respectively were declared proclaimed offenders

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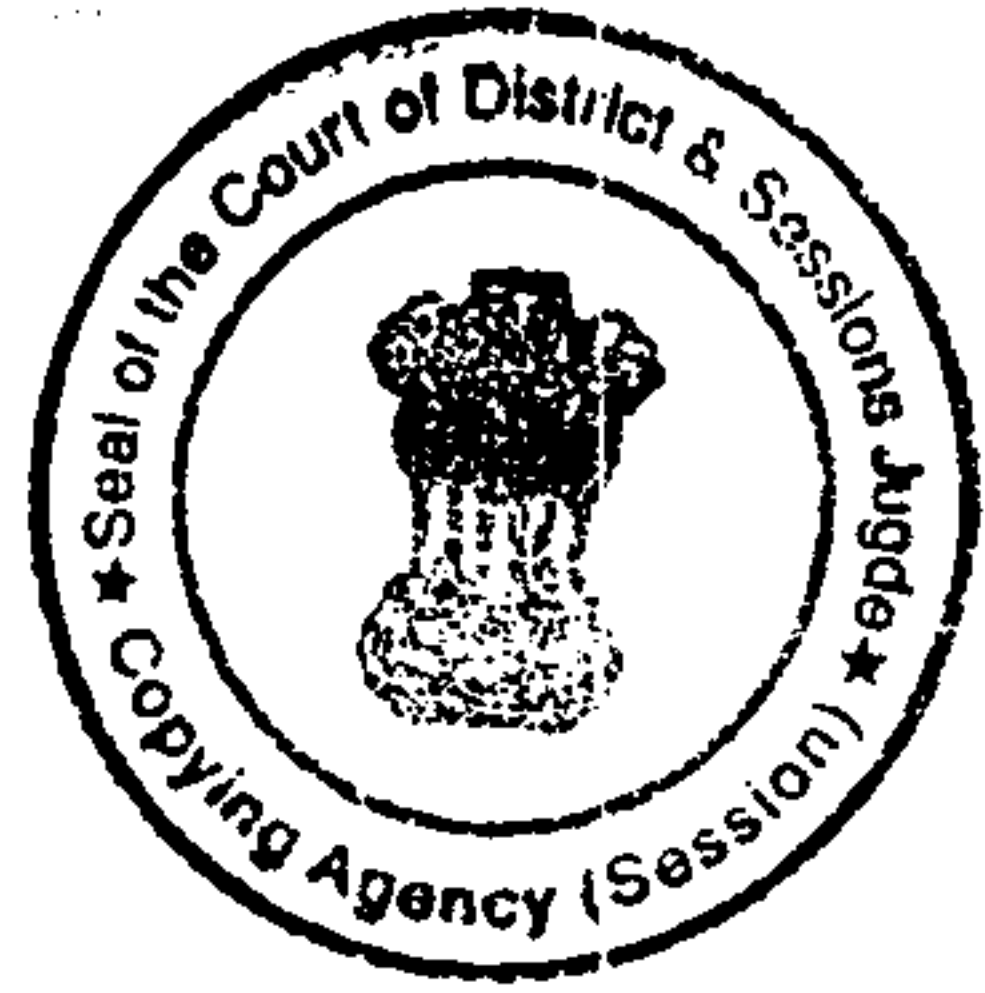
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defence.

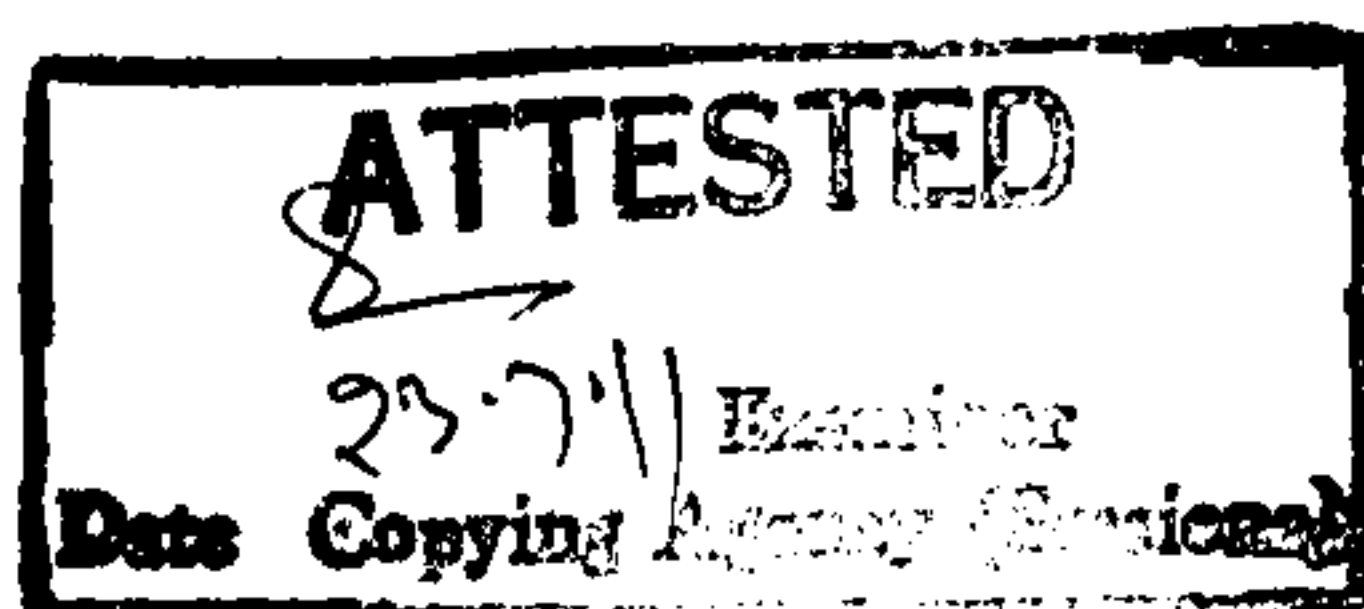
11. I have heard arguments advanced by Sh. Sanjay Mann, Advocate, Counsel for complainant and Sh. Ashish Arya, Advocate, Counsel for accused, perused the record carefully.

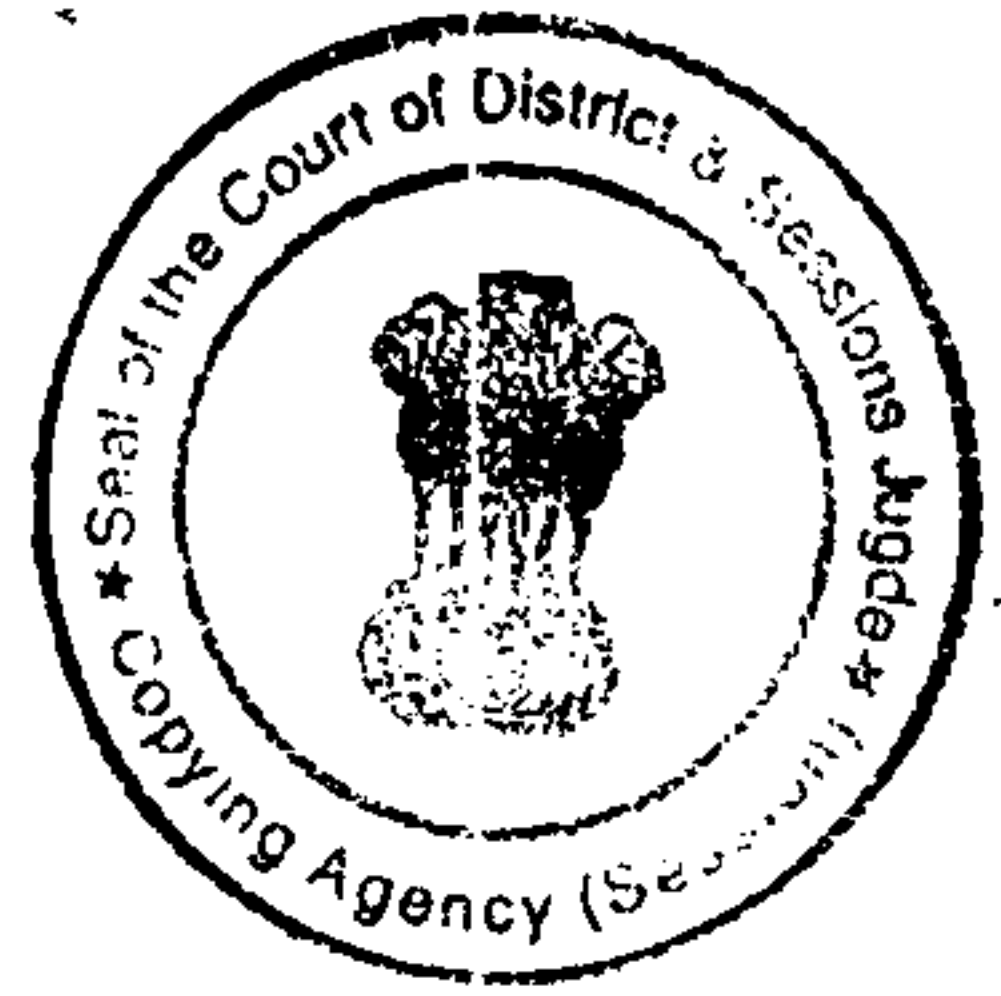
12. Learned Defence Counsel vehemently contended that A7 is not liable for the violation, if any, committed by the company accused as he was not in-charge of, and responsible, to the conduct of the company accused as he was not holding any position in the company accused. He further submitted that lenient view be taken qua other accused persons as company accused had mobilized only ₹ 52,000/- from general public through various CIS. Learned counsel for complainant fairly conceded that there is no document on record to show that A7 Sh. Kamal Kishore Raju was one of the directors in the company accused.

13. CW1 in his cross examination admitted that A7 Sh. Kamal Kishore Raju was not the director as per the Memorandum and Articles of Association of company accused. Though his name is mentioned in Ex. CW1/6 but in the said letter company accused had furnished the detail of directors as well as subscribers. From

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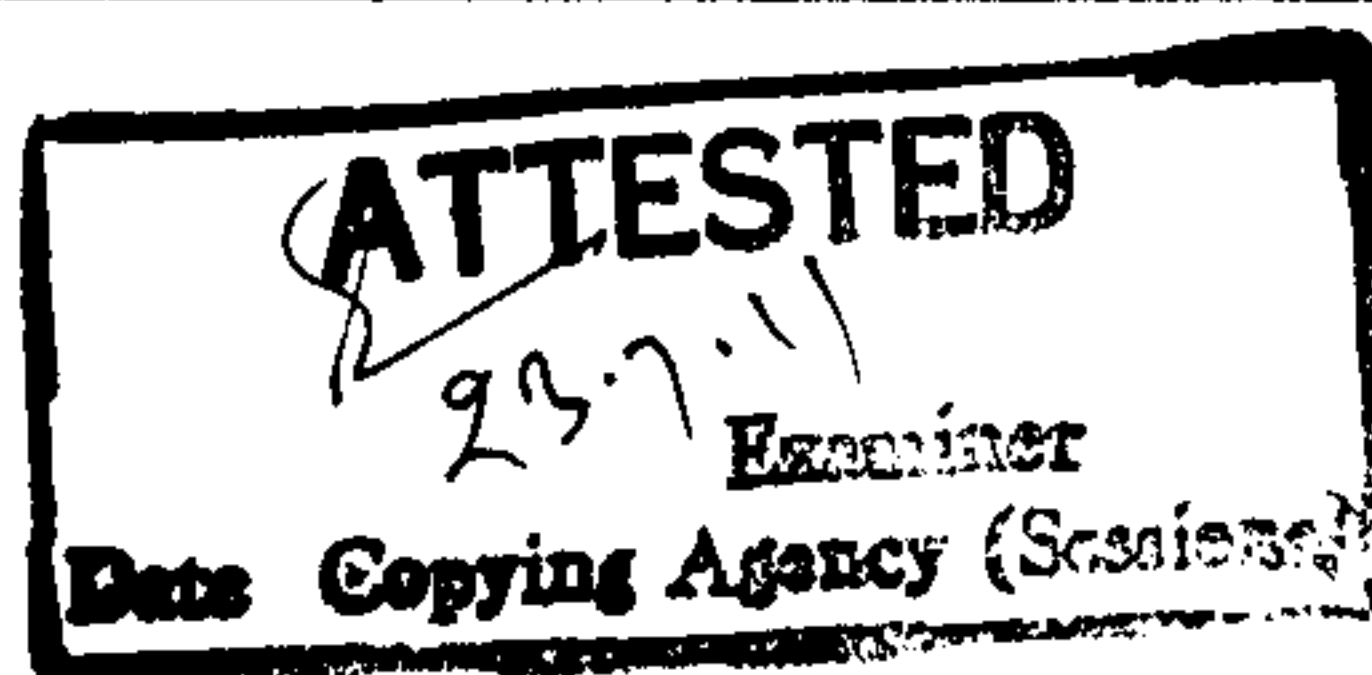
SEBI Vs. ABC Plantation Ltd. & others

the said letter, it cannot be held that A7 Sh. Kamal Kishore Raju was one of the directors in the company accused at the time of mobilizing the funds. However, Memorandum & Articles of Association and the document Ex. CW1/6 proves that A3, A4 & A6 were directors in the company accused and even this fact is not disputed during the course of arguments. Being the directors, they were in-charge of, and responsible, to the conduct the business of the company accused.

14. From the testimony of CW1, it is proved that company accused had mobilised funds to the tune of ₹ 52,000/- from general public in the year 1997. Section 12 (1B) was inserted in the Act in 1995. As per Section 12(1B) of SEBI Acts, no person could sponsor or cause to be sponsored or carry on or caused to be carried on any venture capital funds or collective investment schemes including mutual funds, unless he obtains a certificate of registration from the Board in accordance with the regulations. Thus, company accused was not supposed to mobilize funds from general public through CIS in the year 1997 unless company obtained a certificate of registration from SEBI. Admittedly, in the instant case, company accused had not obtained any certificate of registration, thus company accused had committed the violation of Section 12 (I B) by mobilizing fund through various CIS.

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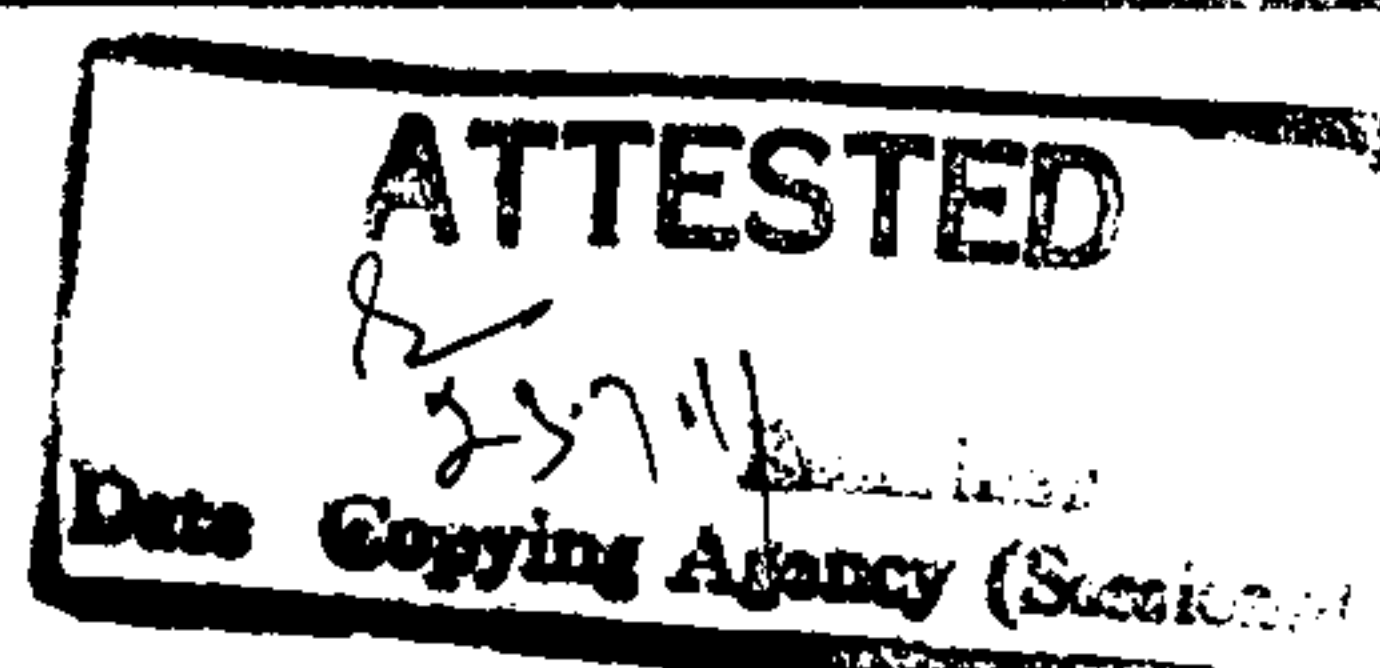
15. It is also undisputed fact that company accused had not applied for the registration of certificate in terms of Regulation 5 of CIS Regulation. Since company accused failed to make the application in terms of Regulation 5 of CIS Regulations, company accused was supposed to refund the amount to the investors in terms of Regulation 73 of CIS Regulations and was further bound to submit the winding up and repayment report with SEBI on the prescribed format. Testimony of CW1 proves that company accused failed to submit the WRR in terms of Regulation 73 of the CIS Regulations, thus company accused had also violated the provisions of Regulation 73 of CIS Regulations.

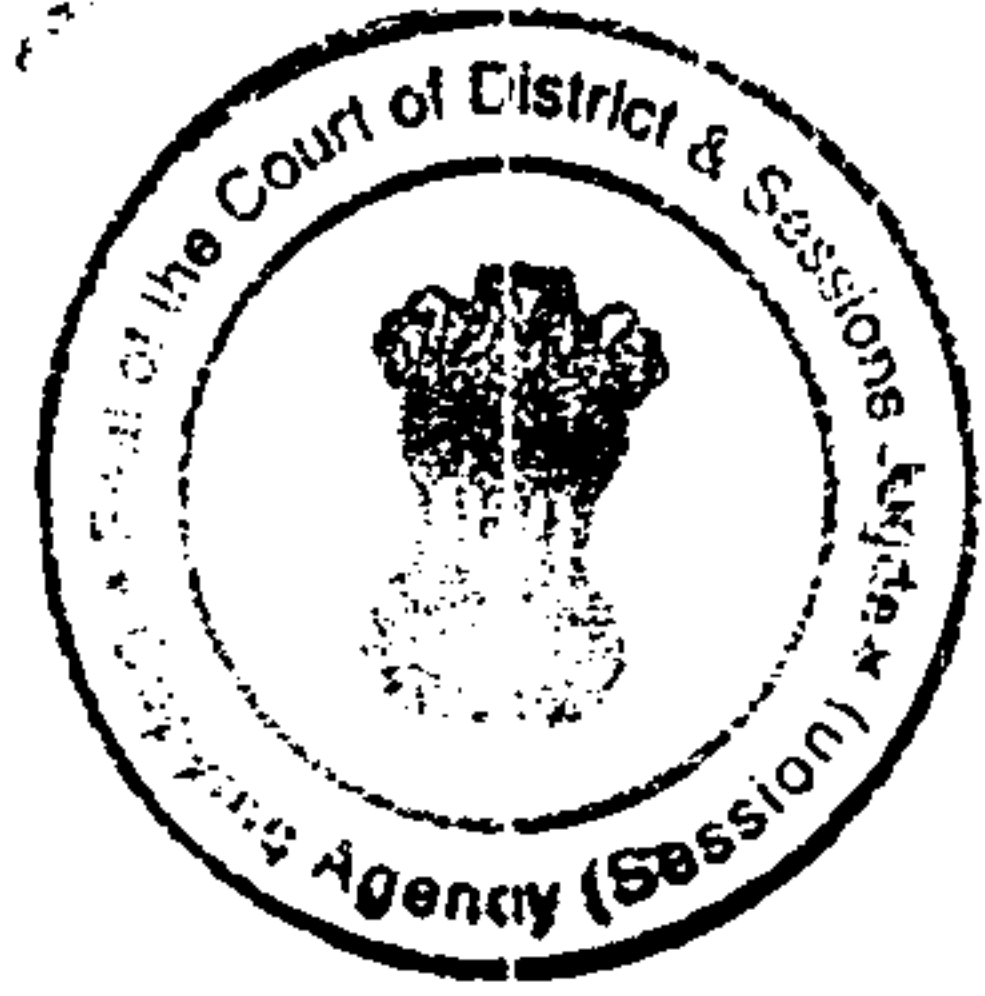
16. Being directors of company accused, A3 Sh. Bhagwati Prasad Singh, A4 Sh. Ravi and A6 Umakant Sharma were in-charge of, and responsible, to the conduct of the business of company accused, hence in terms of Section 27 of the SEBI Act, they are also liable for the violation committed by the company accused.

17. From the on going discussion, I am of the opinion that complainant has established beyond all reasonable shadows of doubt that company accused had violated the provisions of Section

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12 (1B) and Regulation 5 & Regulation 73 of CIS Regulations which is punishable under Section 24 (1) of the SEBI Act. Being the in charge of, and responsible to, the A1 for the conduct its business, A3, A4 & A6 are also liable for the said violations in term of Section 27 of the SEBI Act. Accordingly, I hold them (A1, A3, A4 & A6) guilty for the offence punishable under Section 24 (1) read with section 27 of the SEBI Act.

18. Since, complainant has failed to establish that A7 was in charge of, and responsible to, the A1 for the conduct of its business, I hereby acquit A7 from the charges levelled against him. However, his bail bond and surety bond shall be continued in operation for a period of six months from today in terms of Section 437 A of Code of Criminal Procedure

*Announced in the open Court.
On this 18th day of July 2011*


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





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IN THE COURT OF SH. PAWAN KUMAR JAIN,
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Aslo at:
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.....Convict no.1

2. **Sh. Bhagwati Prasad Singh**, (Director/Promoter)
S/o Sh. Hakin Singh
H-936, Sangam Vijay,
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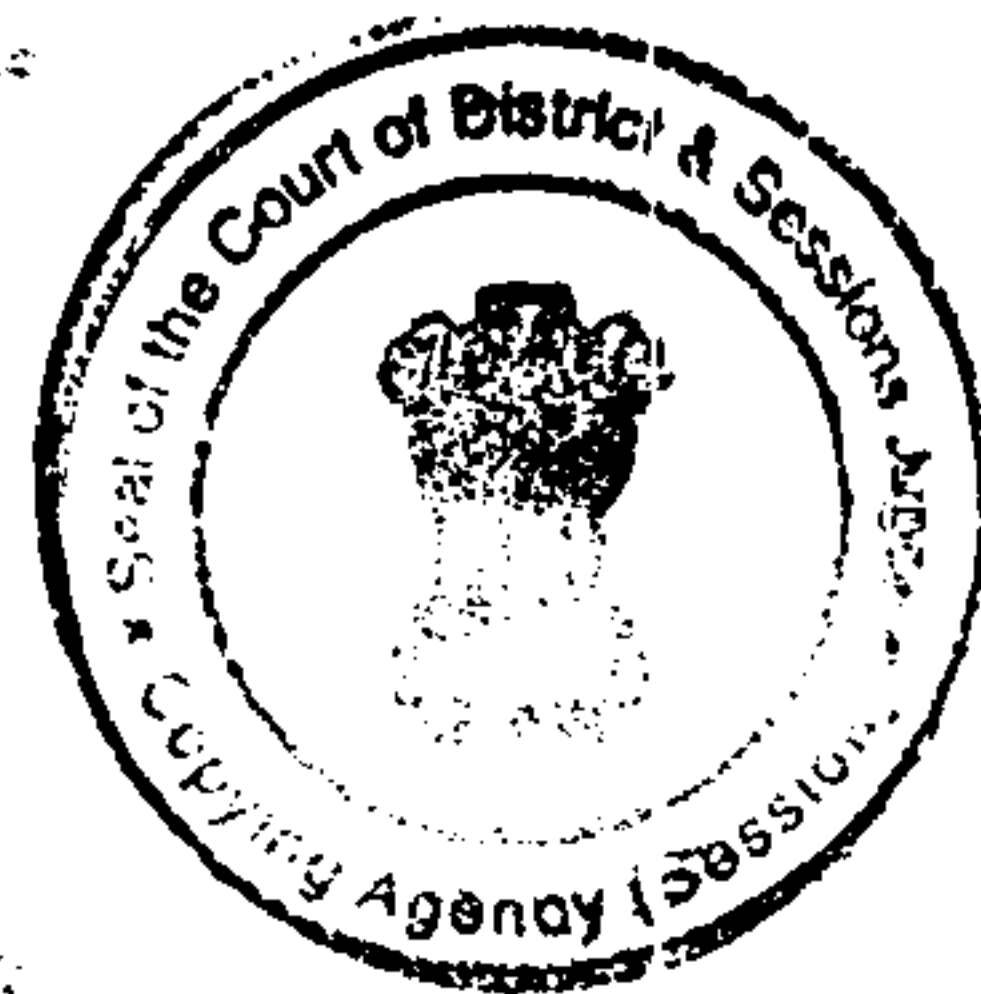
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3. **Sh. Ravi**, (Director/Promoter)
s/o Sh. Munshi Ravi,
Q-706, Seva Nagar, New Delhi.

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.....Convict no.3

4. Sh. Umakant Sharma, (Director/Promoter)
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H-307, Sewa Nagar, New Delhi-110 03.

.....Convict no.4

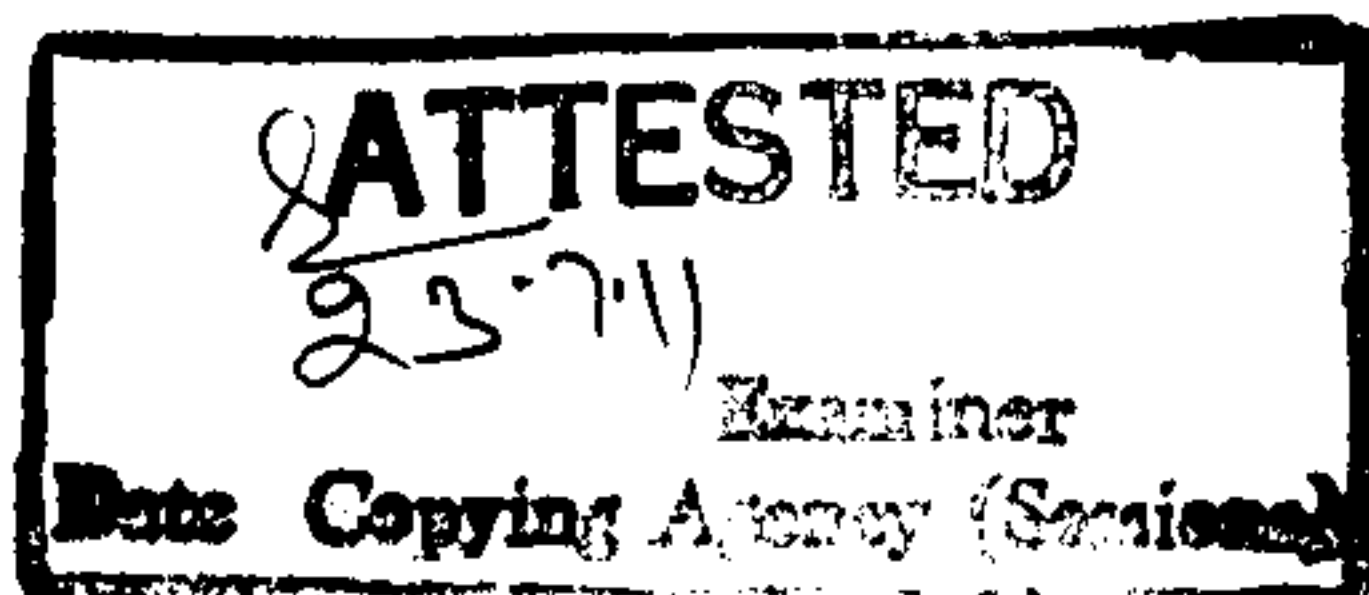
Present: Sh. Sanjay Mann alongwith Ms. Renu Sharma,
Advocates, Counsel for the complainant, SEBI.
Convict no.1 is company and represented by
Convict No. 3.
Sh. Ashish Arya, Counsel for all convicts.

ORDER ON THE POINT OF SENTENCE:

1. Vide judgment dated 18.07.2011, A1 i.e. Company accused, A3, A4 & A6 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 requested for a lenient view on the ground that company accused (convict No.1) had mobilized the funds to the tune of ₹ 52,000/- only from the general public and they are facing trial since 2003 and there is no previous criminal record against any of the convicts. Learned

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counsel for complainant fairly conceded that in the instant matter the quantum of amount is only ₹ 52,000/-.

3. I have heard Counsel for both the parties, perused the record carefully and gave my thoughtful consideration to their submissions.
4. Considering the quantum of amount mobilised through various CIS, I am of the opinion that ends of justice will be met if convicts are burdened with the substantial amount of fine. Accordingly, I hereby impose a fine of ₹ 20,000/- upon each of convicts i.e. Convict No. 1, 2, 3 & 4 in default convict No. 2, 3 & 4 shall under go three months Simple Imprisonment for the offence punishable under Section 24 (1) of the SEBI Act.
5. Fine amount paid.
6. Bail Bond and Surety bond of above convicts stands cancelled. Their sureties stand discharged. Original documents, if any, be returned to the sureties.
7. Copy of judgment alongwith order on the point of sentence be given to the convicts/their counsels free of cost.

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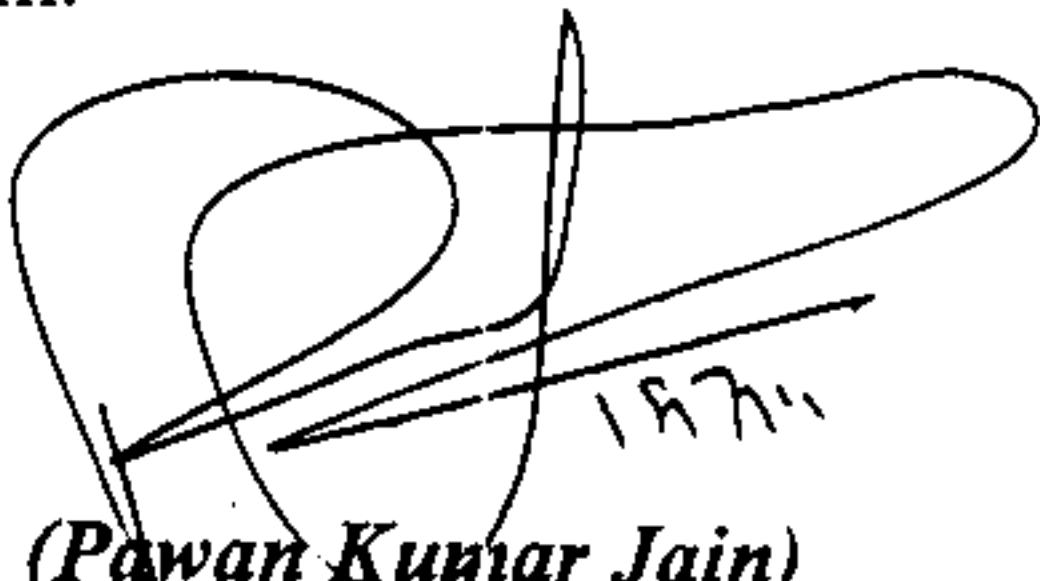




SEBI Vs. M/S ABC Plantation Ltd. & others.

8. File be consigned to record room.

*Announced in the open Court.
On this 18th day of July 2011*


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

