

IN THE COURT OF ADDITIONAL CHIEF METROPOLITAN  
MAGISTRATE, DELHI

CC NO: ~~152~~ OF 2004

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.

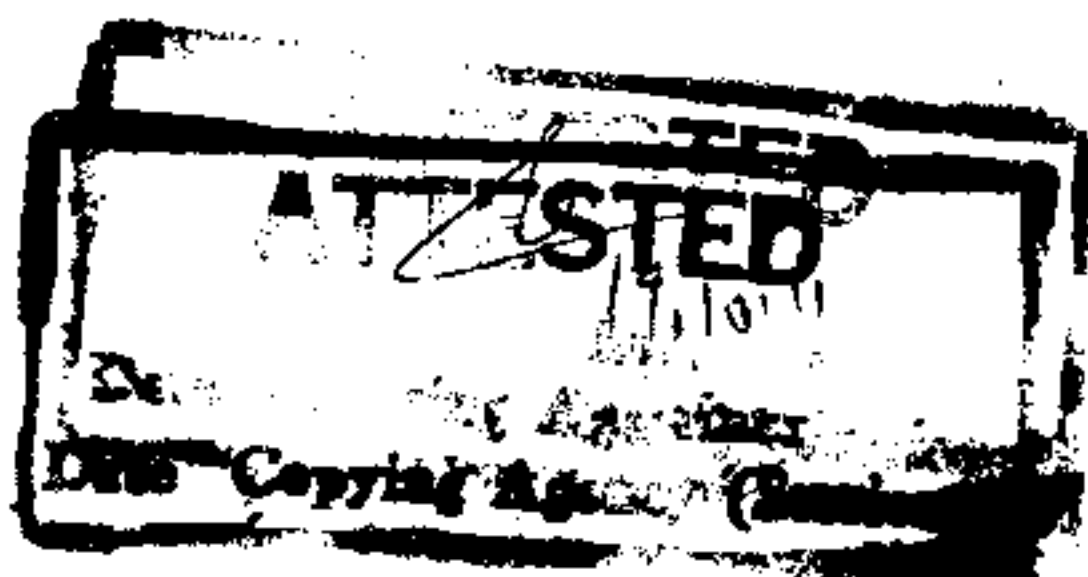
15/07  
4/8/04 30/07/07  
C240125/19009204  
CC No. 84/10  
25/11/10  
...Complainant

VERSUS .

Aglow Greenlands Ltd, a Company  
incorporated Under the Companies Act,  
1956, through its directors, having its  
Regd. Office at : B-25/101, Paramjit Ganj,  
Kapurthala, Punjab-144601.

.....Accused

COMPLAINT UNDER SECTION 190 AND 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. 07**  
**CC No. 84/10**

**01.10.2011**

**Present: Sh. Sanjay Mann, Advocate with Sh. R. K. Pillai,**  
**counsel for SEBI.**

**Accused no. 1 is company represented by accused no.**  
**2&3**

**Accused no. 4 is PO vide order dated 27.08.2009.**

**Sh. J.K. Sharma, Advocate for accused No. 1 to 3.**

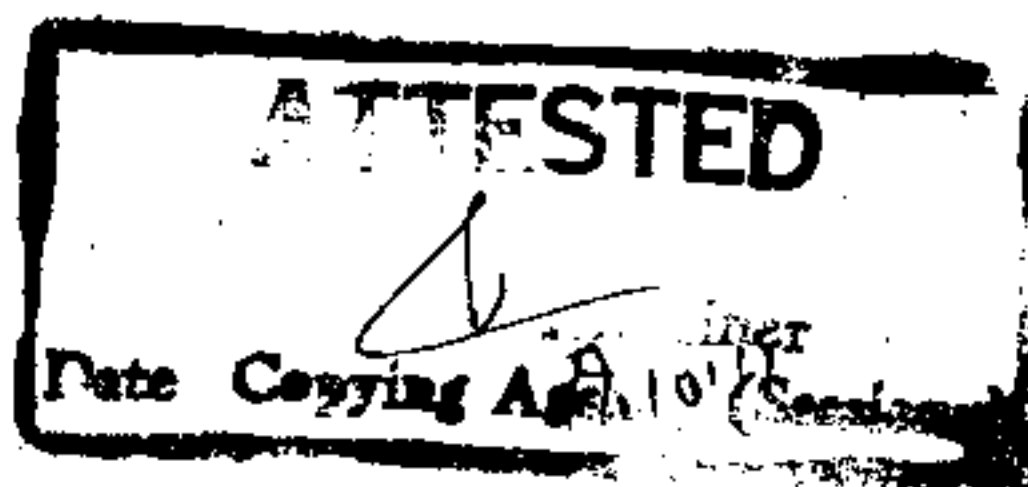
Vide separate judgement Accused no. 1,2 and 3 are held  
guilty for the offence punishable under Section 24 (1) read with section  
27 of the SEBI Act.

Arguments heard advanced by counsel for both the parties  
on the point of sentence.

Vide separate order, a fine of ₹ 70,000/- upon each of  
convicts i.e Convict No.1 to 3 in default Convict nos. 2 & 3 shall  
undergo three month simple imprisonment for the offence punishable  
under Section 24 (1) read with Section 27 of the SEBI Act.

Fine amount paid.

Bail Bond and Surety bond of convicts stands cancelled.  
Their sureties stand discharged. Original documents, if any, be returned  
to the sureties.





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

Since accused no.4 is proclaimed offender, file be consigned to record room with direction that same be revived as and when he is apprehended

[PAWAN KUMAR JAIN]  
ASJ-01/CENTRAL/DELHI  
01.10.2011





SEBI Vs. M/S Aglow Greenlands Ltd. & others

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

**Complaint Case No. 84/2010  
ID No: 02401R5190092004**

**SECURITIES AND EXCHANGE BOARD OF INDIA**, a statutory body established under the provisions of Securities and Exchange Board of India Act, 1992, having its Regional Office at Block No. 32, Rajendra Bhawan, Rajinder Place, New Delhi and represented by its Manager Ms. Deepika Jaggi, Manager, SEBI.

**.....Complainant**

**Versus**

**1. M/S Aglow Greenlands Ltd.**, a Company incorporated under the Companies Act, 1956, having its Regd. Office at: B-25/101, Paramjit Ganj, Kapurthala, Punjab.

**.....Accused no.1**


**2. Sh. Avtar Singh Dulawal**, (Director) ,  
S/o Sh.Sadhu Singh  
R/o House No.245, Model Town,  
Kapurthala, (Punjab).

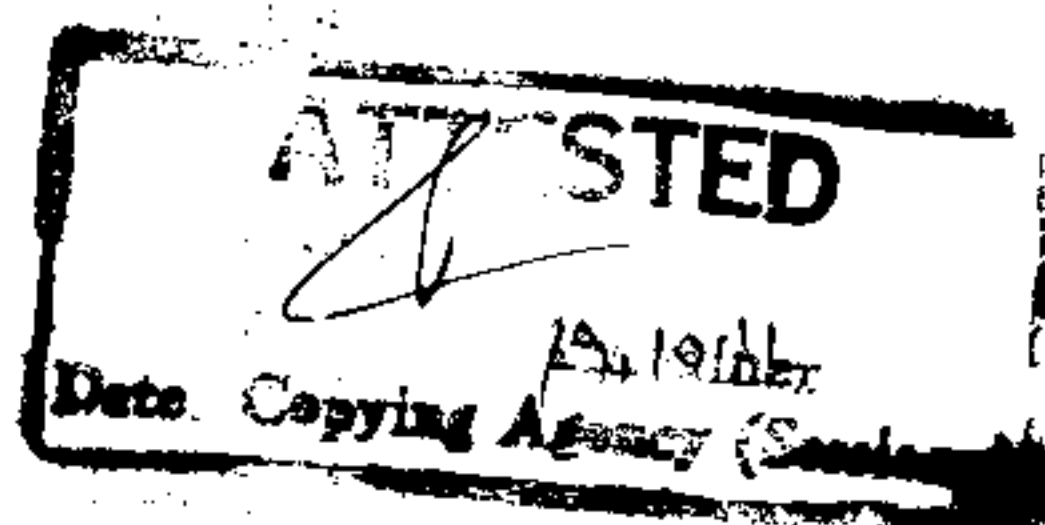
**..... Accused no.2**

**3. Sh. Hira Singh Memi**, (Director)  
S/o Sh. Prem Singh  
R/o H. No. 483, Model Town,  
Distt. Kapurthala, Punjab

**..... Accused no.3**

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4. **Smt. Shashi Kanta**, (Director)  
W/o Sh. Sat Pall  
R/o House No.270, Mohalla Dr. Sadiq  
Ali, Kapurthala, (Punjab).

..... Accused no.4

**Date of Institution** : 04.03.2004  
**Date of committal of case from Sessions Court** : 14.02.2005  
**Date of Judgment reserved on** : 16.09.2011  
**Date of pronouncing the judgment** : 01.10.2011

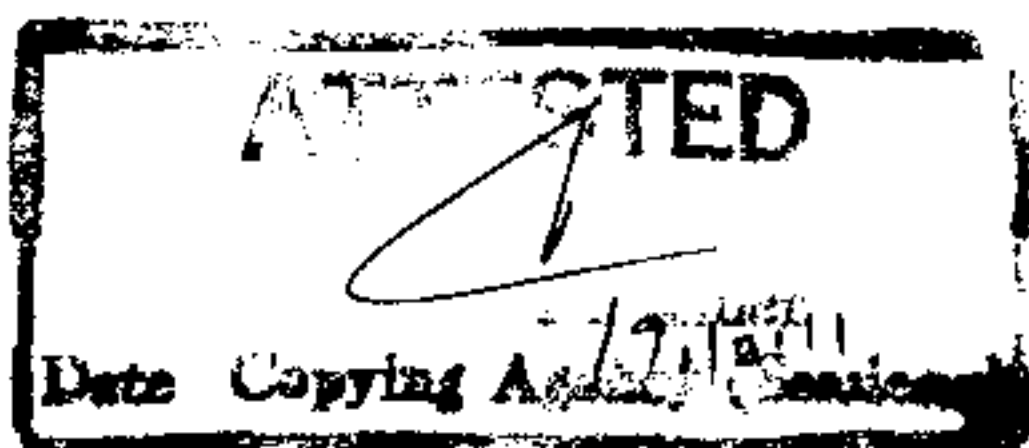
**Present:** Sh. Sanjay Mann, Advocate for the SEBI  
Accused No.1 is company  
Sh. J.K. Sharma, Advocate, Counsel for accused  
No. 1,2 & 3.

## 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 December 15, 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)

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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.

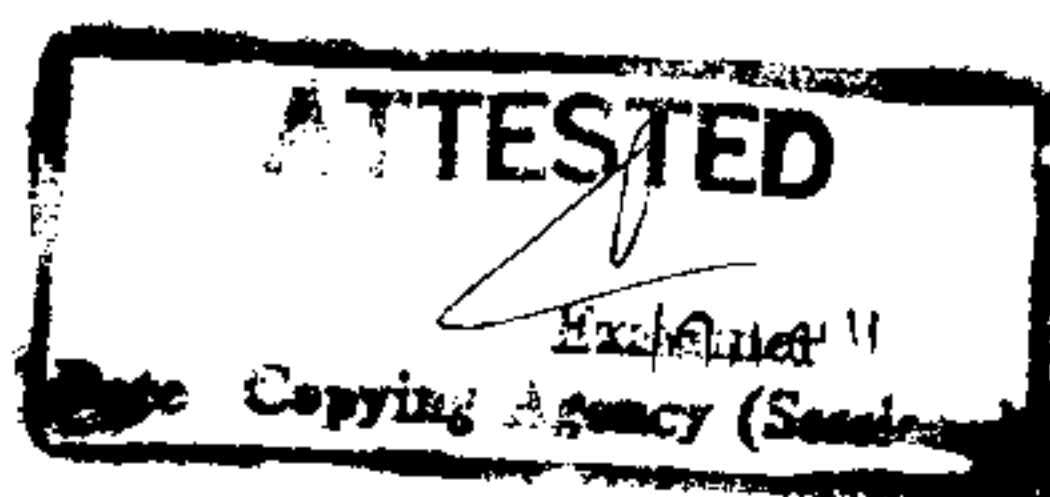
2. **Four** persons were arrayed as accused in the criminal complaint preferred under Section 200 Cr.P.C., they being M/S Aglow Greenlands Ltd. Company (hereinafter, "A1"), accused No. 2 Sh. Avtar Singh Dulawal ("A2"), accused No. 3 Sh. Hira Singh Momi ("A3"), accused No. 4 Smt. Shashi Kanta ("A4"). It was alleged that A2 to A4 were Directors/promoters 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 Scheme (CIS) and raised large amount about ₹ 9,09,482/- 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

  
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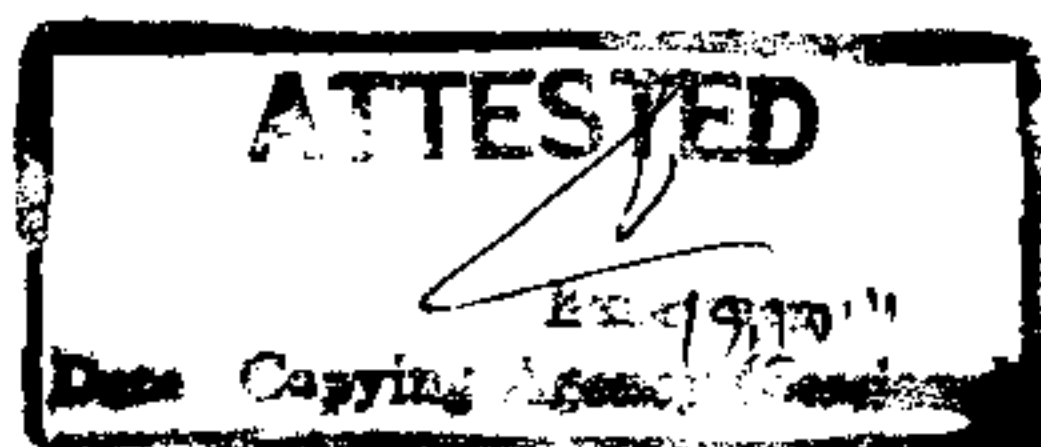
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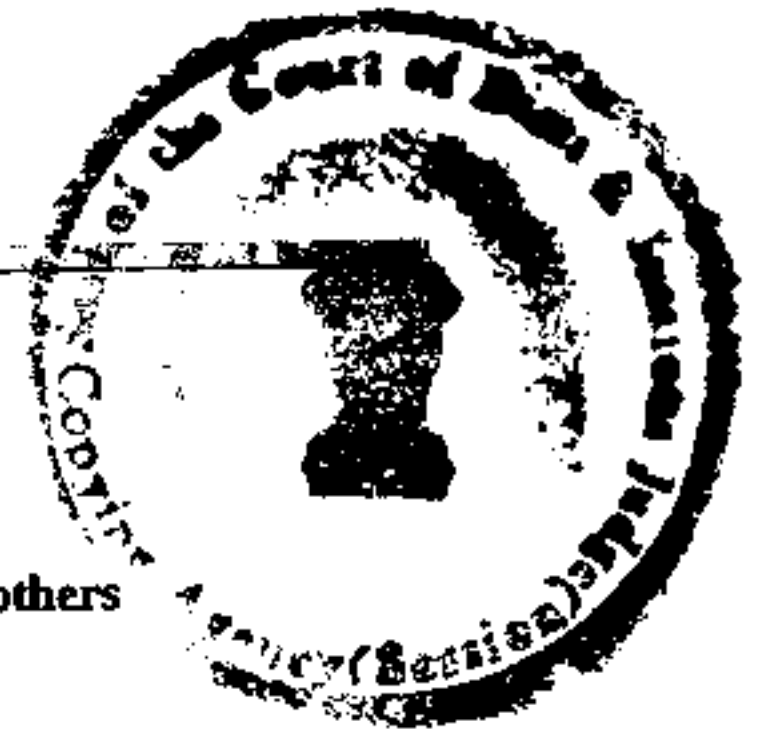




amount collected from the investors in terms of the CIS Regulations, thus constituting violation of the law and regulations framed thereunder and thereby committing the offence alleged as above.

4. **Cognizance** on the complaint was taken by the learned ACMM vide order dated March 04, 2004 whereby process were issued under Section 204 Cr.P.C. against all the accused persons.
5. **On account of the amendment**, particularly in Sections 24 and 26 of the SEBI Act, through Amendment Act which came into force w.e.f. November 24, 2002, pursuant to Administrative Directions of Hon'ble High Court, under orders of the Ld. Distt. & Sessions Judge, this case was transferred on February 14, 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 August 27, 2009**, A4 was declared Proclaimed Offender. Thereafter, vide order dated November 20, 2009, a notice for the offence punishable under Section 24 read with section 27 of the SEBI Act was served upon remaining






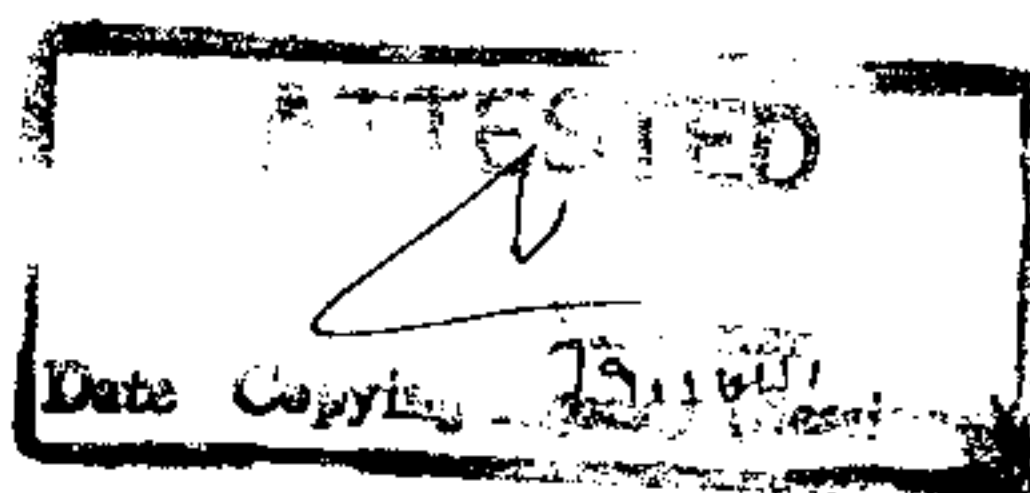
accused persons namely A1, A2, & A3 to which they pleaded not guilty and claimed trial.

7. To prove its case, complainant has examined one witness namely Ms. Deepika Jaggi, Manager, SEBI as CW1. Thereafter, accused persons were examined under Section 313 Code of Criminal Procedure wherein A2 took the plea that though he was one of the directors in the company accused and company accused had raised some funds from public but the company had returned the said amount to the investors. It is stated that he was not involved in the day -to -day affairs of the company accused and A4 Shashi Kanta was responsible for the day -to- day affairs of the company accused. Similarly, A3 also took the plea that the amount collected had already been refunded to the investors and no investor had made any complaint till date.

8. In order to prove their innocence both the accused have examined Sh. Jasvinder Singh as DW1 who was working as clerk in the company.

9. I have heard arguments advanced by Sh. Sanjay Mann, Advocate, counsel for complainant, SEBI and Sh. J.K. Sharma Advocates, Counsel for accused persons, perused the record carefully.

  
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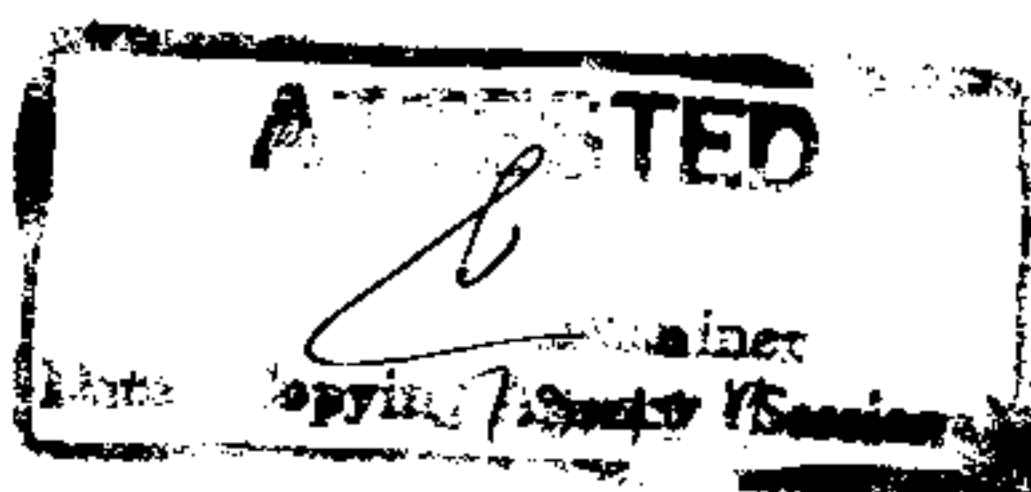




10. **Learned** counsel appearing for the accused persons vehemently contended that since company accused had already refunded the entire amount and no complaint of any investor is pending with the SEBI, company accused had not violated any provisions of law. The said contention is refuted by learned counsel for complainant by arguing sagaciously that it is immaterial whether company accused had refunded the amount to the investors or not, but the moot point is whether company accused had mobilized funds in violation of provisions of law or not or whether the company accused had submitted the Winding Up and Repayment Report or not in terms of CIS Regulations.

11. **From** the contentions raised by counsel for the parties, moot question arises as to whether company accused had violated any provisions of SEBI at the time of mobilizing funds through CIS or not.

12. **Vide** its letter dated February 15, 2001, which is exhibited as Ex CW1/21, company accused informed the SEBI that company had mobilised funds to the tune of ₹ 9,09,482 till January, 2001. It is admitted fact that company was incorporated after 1995. As per Section 12(1B) no person could sponsor or

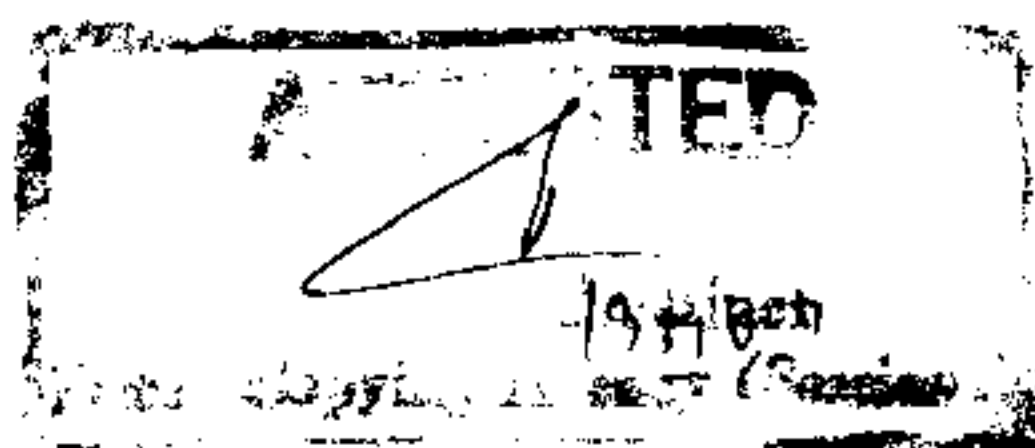




cause to be sponsored or carry on or caused to be carried on any venture capital funds or collective investment schemes including mutual funds, unless he obtains a certificate of registration from the Board in accordance with the regulations. The said Section was inserted in the Act in the year 1995. It means that after 1995, no company was supposed to mobilize funds unless it obtains a certificate of registration from the board in accordance with the regulation. Admittedly, the company accused was incorporated after 1995 and had mobilized the funds till 2001, which is in violation of Section 12(1B) of the Act because company accused had mobilized the funds without obtaining certificate of registration from the board.

13. Now, question arises that the regulations were notified in October 1999 only and there was no regulations prior to 1999 when company accused had started mobilizing funds through various CIS, thus, it could be argued that company accused could not obtain any certificate of registration from SEBI in terms of Section 12(1B) of the Act. This question was dealt with by Allahabad High Court in case Paramount Bio-Tech Industries Limited Vs. Union of India reported in 2003 INDLAW All 168, wherein it was held in para 80:-

*"It is true that there was no Regulations upto 1999 and, hence, certificate could not be granted*



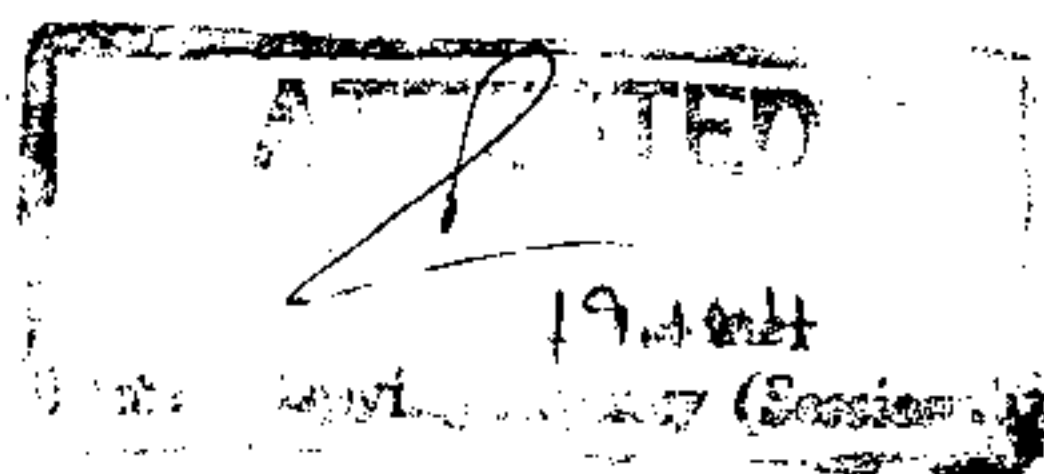




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under Section 12(1B). However, the proviso to Section 12(1B) permitted only those persons who were carrying on the business of collective investment scheme prior to the 1995 amendment ( which came into force with effect from 25 January, 1995) to continue to operate till Regulations were framed. Petitioner No.1 was incorporated in 1996 (Vide paragraph 7 to the writ petition) and, hence, it was obviously not carrying on the said business before 25 January 1995. Hence, it could not get the benefit of the proviso to Section 12(1B). It follows that the business of collective investment scheme, which it was doing, was wholly illegal. The letter of the SEBI to the petitioner dated 27 February, 1998 (vide Annexure 4 to the writ petition) was thus indulgent to the petitioner. In fact, by that letter, the SEBI took a lenient view by permitting the petitioner to operate after getting rating from a credit agency. In fact, even this concession could not have been granted by the SEBI, as the proviso to Section 12(1B) does not apply to the petitioner, for the reasons given above. The SEBI should in fact have totally prohibited the petitioner from doing the business of collective investment scheme and should have directed prosecution of the petitioner and its officials under Section 24 read with Section 27 of the SEBI Act".

14. **From** the above judgment, it becomes crystal clear that after insertion of Section 12(1B) in the Act, company accused was not entitled to mobilize funds without obtaining a certificate of registration from the board in accordance with regulations, but in the instant case, company accused had mobilized funds in the year 1997-2001 without obtaining the certificate of registration which is violation of Section 12(1B) of the Act. Since, funds were mobilized after 1995, company accused was not entitled for the relaxation as provided under the proviso to Section 12(1B) of the



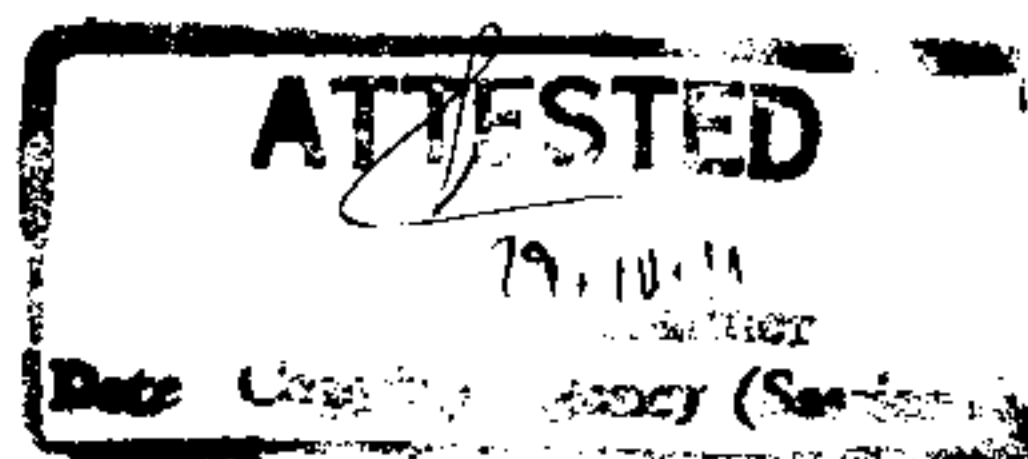


Act.

15. It is also undisputed fact that CIS regulations were notified on October 15, 1999. As per Regulation 5(1), any person who was immediately prior to the commencement of these Regulations was operating any scheme, shall make an application to the Board for the grant of certificate within two months from the date of regulations. Admittedly, company accused had not made an application in accordance with regulations 5 of the CIS Regulation. According to Regulation 73, if the company failed to make any such application, company shall wind up the existing scheme and the amount repayable to each investor and the manner in which amount is determined and was returned to the investor and shall also file winding up and repayment report with the SEBI on the prescribed format. Admittedly, the company accused had not complied with the provisions of Regulation 73 of the CIS Regulations, thus, company accused had not only violated Regulation 5 but also violated Regulation 73 of the CIS which amounts violation of Section 24(1) of the Act.

16. Thus, the contention of learned defence counsel that company had not violated any provisions of law because the amount had already been refunded to the investors is without any

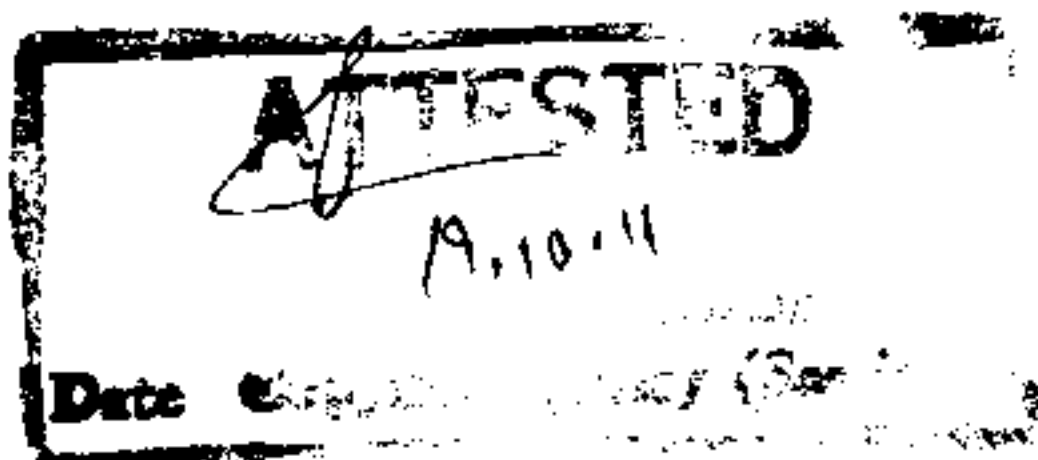
*[Signature]*  
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substance. Since, company had mobilized funds in violation of Section 12(1B) of SEBI Act and also violated Regulation 5 and 73 of CIS Regulations, company accused is guilty for the offence punishable under Section 24(1) of the SEBI Act.

17. **Though**, in their statement recorded under Section 313 Cr.PC, accused persons took the plea that they were not involved in day to day affairs of the company accused, yet during the course of arguments, the said plea was not pressed by the learned defence counsel. Moreover, SEBI had obtained the certified copy of the Memorandum and Article of Association of company accused, which is exhibited as Ex. CW1/23 wherein name of both the accused are mentioned as the first directors. Even CW1 in her testimony categorically deposed that accused persons were directors and also in-charge of, and responsible to the company accused and during the trial accused persons failed to produce any contrary evidence on record. In the absence of any contrary evidence on record, I do not find any reason to dis-believe the evidence led by the complainant. Being directors, they were in-charge of and responsible to A1 for the conduct of its business, thus, they are also liable for the violations committed by the company accused in terms of Section 27 of the SEBI Act.





18. Pondering over the on-going 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 in violation of Section 12(1B) of the Act and also violated Regulation 5 and 73 of the CIS Regulations, which is punishable under Section 24 (1) of the SEBI Act. Complainant has also succeeded to establish that A2 and A3 being directors of company accused (A1) were in-charge of, and responsible to, the company accused for the conduct of its business at the time of above violations. Thus, they are also liable for the said violations in terms of Section 27 of the SEBI Act. Accordingly, I hereby hold A1 M/S Aglow Greenlands Ltd. A2 Sh. Avtar Singh Dulawal, and A3 Sh. Hira Singh Momi guilty for the offence punishable under Section 24 (1) read with section 27 of the SEBI Act.

Announced in the open Court  
on this 1st October, 2011.

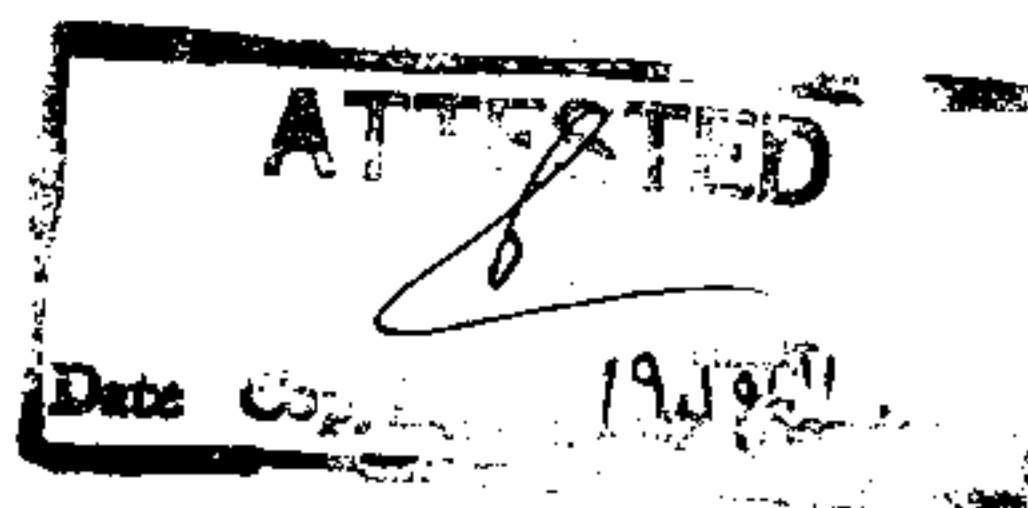


(PAWAN KUMAR JAIN)

ADDITIONAL SESSIONS JUDGE-01  
CENTRAL/THC/DELHI

Copy given to the Convict  
in open Court at J.C.

J K Sharma  
7-10-11 02/10/11







SEBI Vs. M/S Aglow Greenlands Ltd. & others

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

**Complaint Case No. 84/2010  
ID No: 02401R5190092004**

**SECURITIES AND EXCHANGE BOARD OF INDIA**, a statutory body established under the provisions of Securities and Exchange Board of India Act, 1992, having its Regional Office at Block No. 32, Rajendra Bhawan, Rajinder Place, New Delhi and represented by its Manager Ms. Deepika Jaggi, Manager, SEBI.

**Versus**

**.....Complainant**

1. **M/S Aglow Greenlands Ltd.**, a Company incorporated under the Companies Act, 1956, having its Regd. Office at: B-25/101, Paramjit Ganj, Kapurthala, Punjab.

**..... convict no.1**

2. **Sh. Avtar Singh Dulawal**, (Director) ,  
S/o Sh.Sadhu Singh  
R/o House No.245, Model Town,  
Kapurthala, (Punjab).

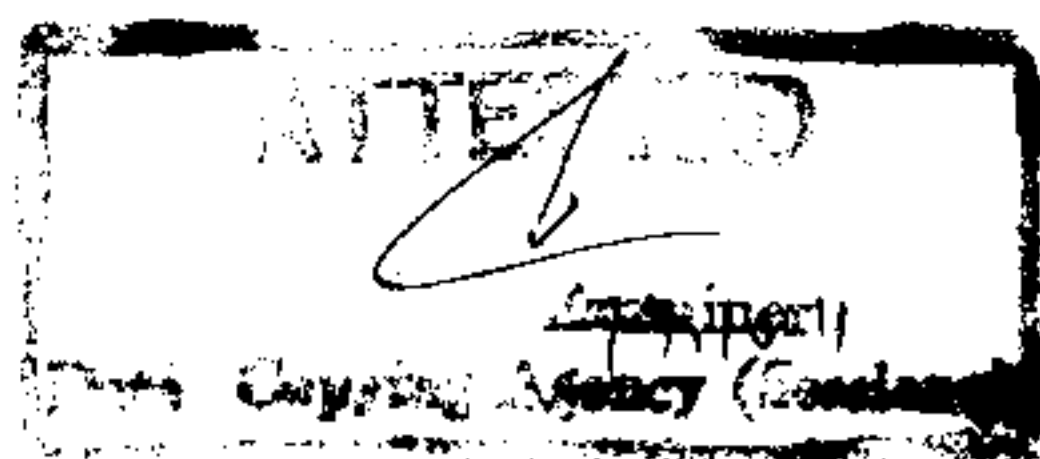
**..... convict no.2**

3. **Sh. Hira Singh Momi**, (Director)  
S/o Sh. Prem Singh  
R/o H. No. 483, Model Town,  
Distt. Kapurthala, Punjab

**..... convict no.3**

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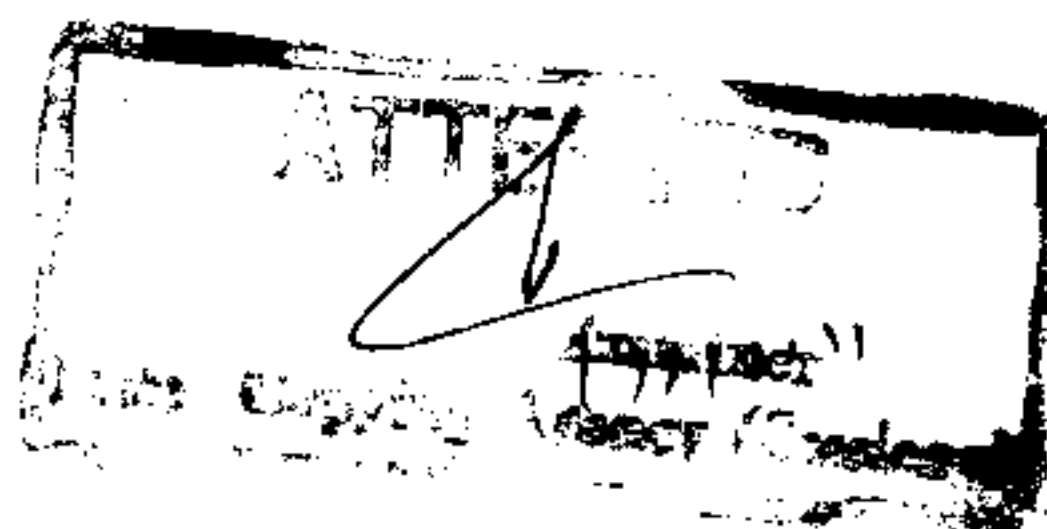




**Present:** Sh. Sanjay Mann, Advocate for the SEBI  
Accused No.1 is company  
Sh. J.K. Sharma, Advocate, Counsel for convict  
No. 1,2 & 3.

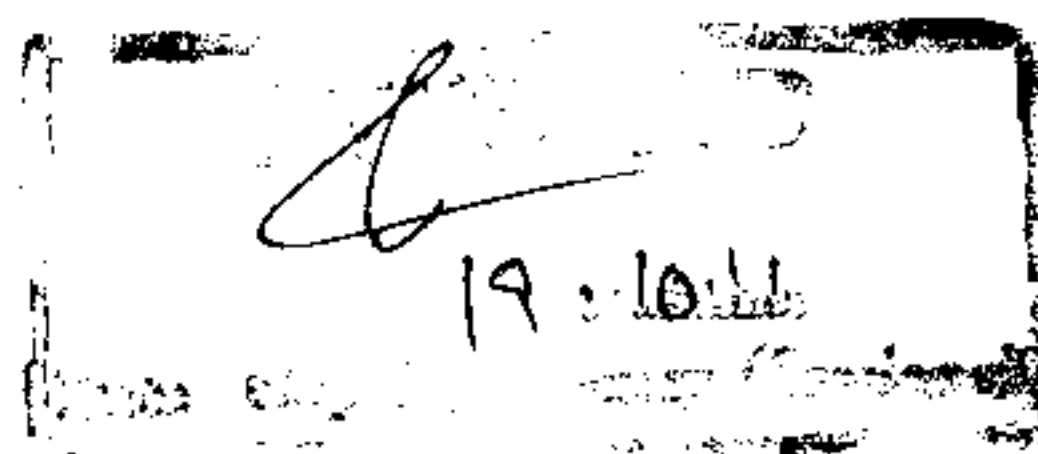
**ORDER ON THE POINT OF SENTENCE**

1. Vide separate judgment dated 01.10.2011, A1 i.e. Company accused, A2 and A3 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 they are the sole bread earner of their respective family. It is further submitted that there is no criminal antecedents against any of the convicts and the amount which was mobilized by the company accused has already been refunded to the investors and till date no investor had made any complaint with the SEBI. On the other hand, learned counsel for the complainant requests for substantial punishment.
3. I have heard Counsel for both the parties, perused the record carefully and gave my thoughtful consideration to their submissions.





4. In the instant case, company accused has mobilized funds to the tune of ₹ 9,09,482 and during the trial complainant failed to produce any document on record to show that any complaint of any investor is pending with the SEBI. There is no previous criminal involvement of any of the convicts.
5. **Considering** the submissions made by learned counsel for the convicts and the quantum of amount involved in the present complaint, 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 ₹ 70,000/- upon each of convicts i.e Convict No.1 to 3 in default Convict nos. 2 & 3 shall undergo three month simple imprisonment for the offence punishable under Section 24 (1) read with Section 27 of the SEBI Act.
6. **Fine amount paid.**
7. **Bail Bond and Surety bond of convicts stands cancelled.** Their sureties stand discharged. Original documents, if any, be returned to the sureties.
8. **Copy** of judgment alongwith order on the point of sentence be given to the convicts/their counsel free of cost.

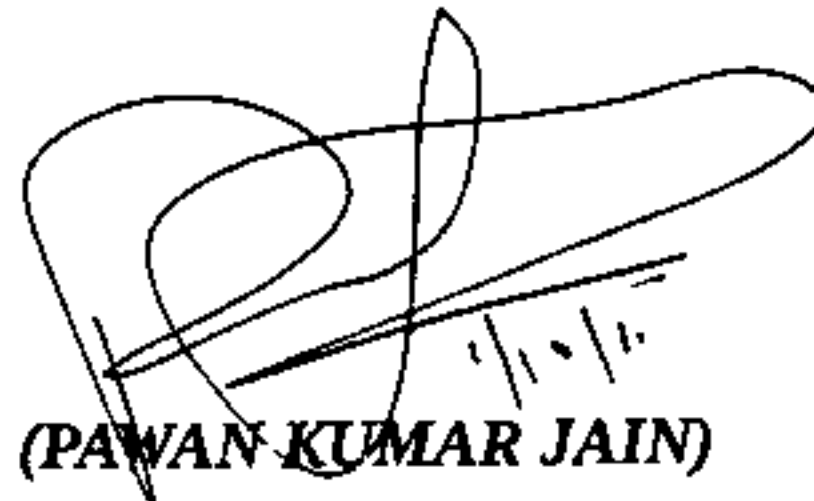




SEBI Vs. M/S Aglow Greenlands Ltd. & others

9. File be consigned to record room.

Announced in the open Court  
on this 1<sup>st</sup> October, 2011.

  
(PAWAN KUMAR JAIN)

ADDITIONAL SESSIONS JUDGE-01

CENTRAL/THC/DELHI

*Copy given to the Convict  
in open Court at Jue.*

*J K Sharma*  
*7-10-11* *07/10/11*

