

IN THE COURT OF ADDITIONAL CHIEF METROPOLITAN

MAGISTRATE, DELHI

CC NO: 185 OF 2004

4/3/04

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. Brssha Plantations Ltd, a Company incorporated Under the Companies Act, 1956, through its directors, having its Regd. Office at : Shop No. 2, 76-E, Vaishali, Palam Dabri Road, New Delhi. And also having its office at: 72, Adharshila Complex, South Gandhi Maidan, Patna (Bihar).
2. Suman Kumar Singh S/o Hari Dayal Singh, Director of Accused No.1. R/o: A-3-P, Delhi Police Apartments, Mayur Vihar Phase I, New Delhi.
3. Bittu Kumar Singh S/o Hari Dayal Singh, Director of Accused No.1. R/o: A-3-P, Delhi Police Apartments, Mayur Vihar Phase I. New Delhi.
4. Deo Nath Singh S/o Late Shri Bipat Singh, Director of Accused No.1. R/o: 22-5, Delhi Police Apartments, Mayur Vihar

Discharged

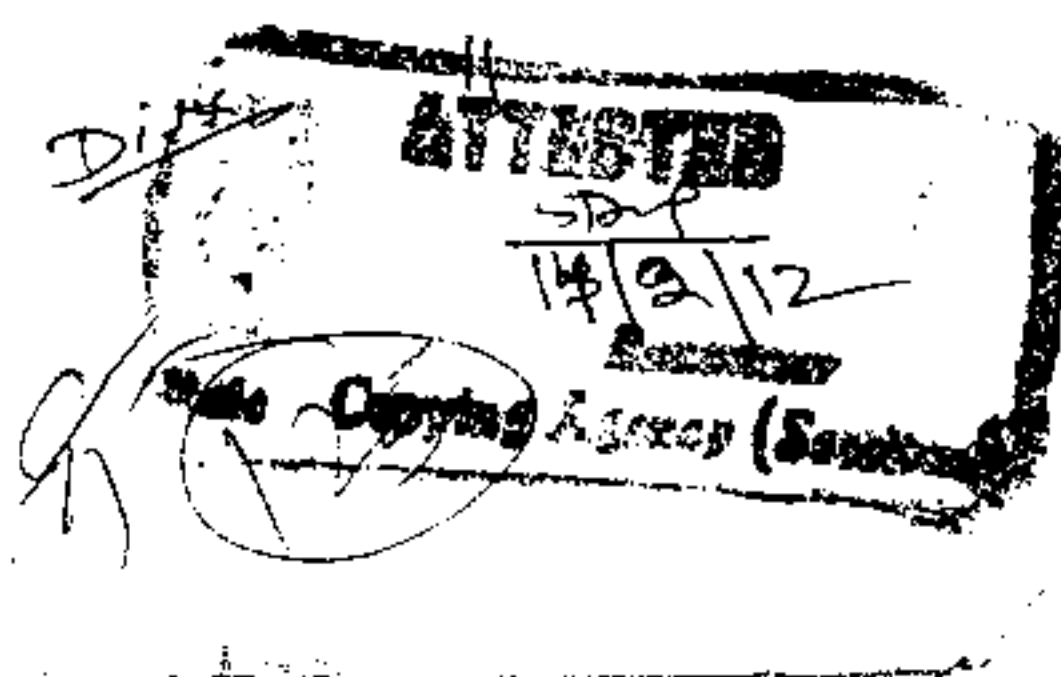
Discharged

Discharged



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Phase I, New Delhi.

5. Anita Devi D/o Shri Rameshwar Parsad,

Director of Accused No.1. R/o: Road No.

Damaria, Gardgani Bagh, P.O.:

Anishabad, Patna.

6. Manoj Kumar Jha S/o Shri Andesh

Chandra Jha, Director of Accused No.1.

R/o: D-26, Alaknanda, North Shastri

Nagar, Patna-23.

7. Manoj Kumar S/o Jagdish Singh,

Director of Accused No.1. R/o: A/82,

Magistrate Colony, Patna-25.

8. Sandeep Parashar S/o Shambhu

Prasad, Director of Accused No.1. R/o:

Adarsh Nagar, Phulwari Sharief, Patna-

5.

9. Mrs. Archana Raman W/o Shri Dhananjay

Singh, Director of Accused No.1. R/o:

Indrapuri Colony, Raja Bajar, Patna-14.

10. Shelender Kumar Singh S/o Bansi

Prasad Singh, Director of Accused No.1.

R/o: Bihiya Road, Piro, A-T, Post Office :

Piro, Distt. Bhojpur-7.

11. Sanjay Kumar S/o Late Kanhaiya Lal

Singh, Director of Accused No.1.

R/o: Nawa Garh, Kharkhari, Dhanbad.

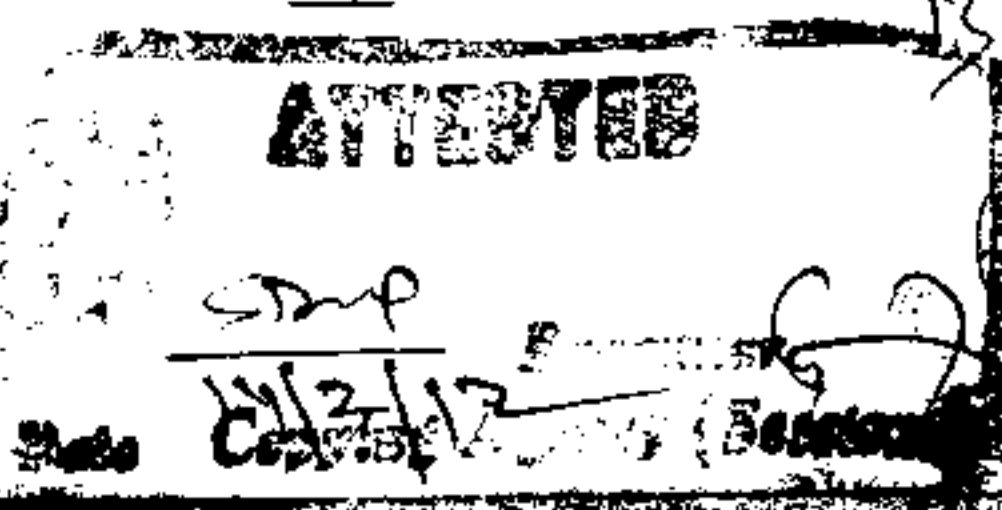
.....Accused

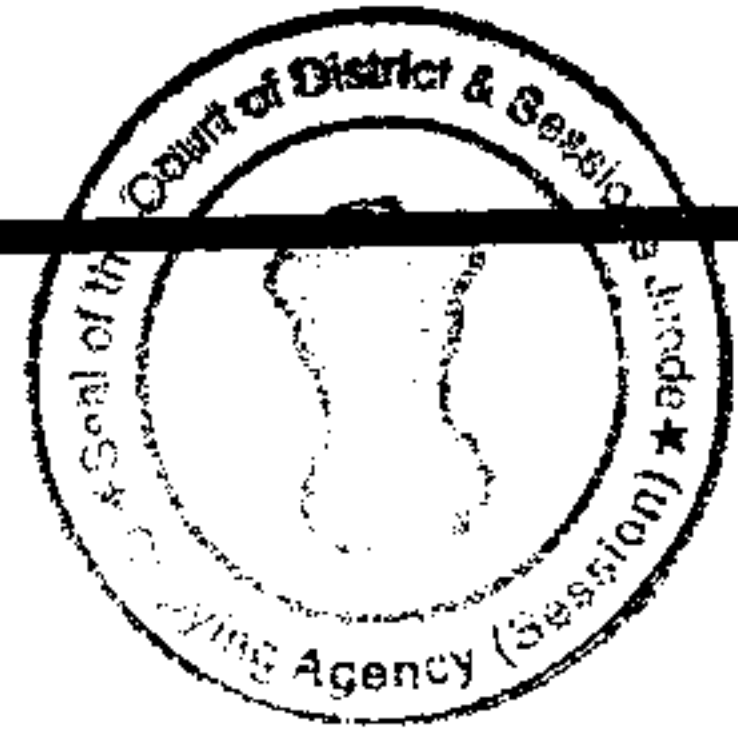
COMPLAINT UNDER SECTION 190 AND 200 OF THE CODE OF CRIMINAL PROCEDURE.

1973 READ WITH SEC. 24(1), 27 OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT.

1992

May It Please Your Honour





Item No. 4

CC No. 72/10

9.02.2012

Present: Sh. Sanjay Mann, Advocate Counsel for SEBI.

Accused No. 1 is company represented by Mr. Suman Singh, AR with Sh. S. N. Vashisth, Advocate Counsel for accused No. 1 company.

Offence qua accused No. 2 to 5,7,9 to 11 have already been compounded and accused persons have been discharged vide order dated 20.08.2010 & 20.11.2011.

Accused No. 6,8 are PO vide order dated 08.02.2011.

An application on behalf of SEBI has been moved for substitution of the witnesses. Copy supplied to the Ld. Defence Counsel. Same is not opposed. Accordingly, same is allowed.

CW-1 is examined and discharged.

On the statement of Ld. Counsel for the SEBI, CE stands closed.

AR of accused No.1 company is examined U/s 313 Cr. P.C in which he refused to lead evidence in defence.

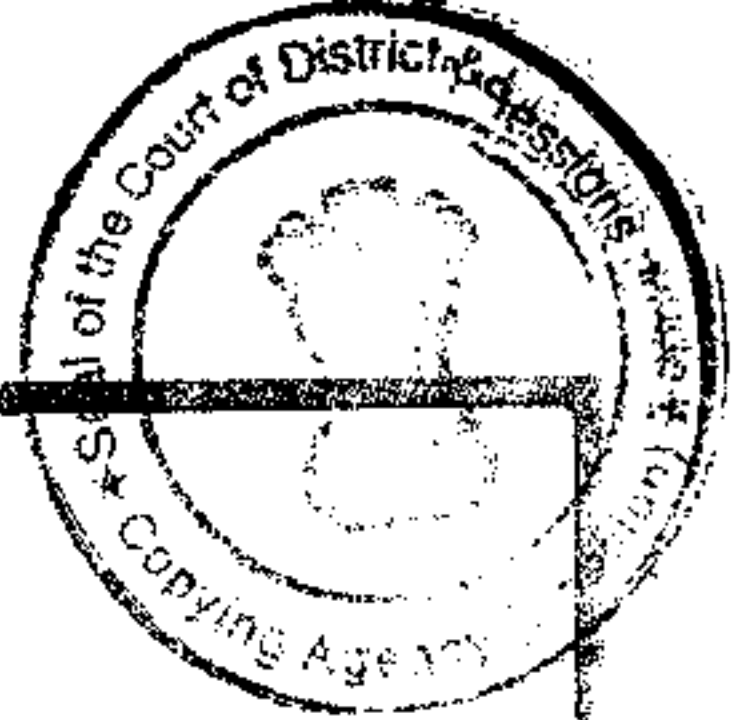
Arguments heard.

Vide separate judgment, A-1 is held guilty for offence punishable U/s 24 (1) r/w Section 27 of SEBI Act.

Arguments on the point of sentence heard.

Vide separate order, a fine of ₹ 5,000/- is imposed for the

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[Date: 04/2/12]



offence punishable U/s 24(1) r/w Section 27 of SEBI Act.

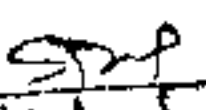
Fine is paid.

Copy of Judgment and Order on the point of sentence be given to convict/its counsel free of cost.

Since accused No. 6 & 8 are PO, file be consigned to record room with directions that same be revived as and when they are apprehended.


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

9.02.2012.


14/2/12



SEBI Vs. Brssha Plantation etc.

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

**Complaint Case No. 72 of 2010
ID No: 02401R5190032004**

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, Ms. Versha Aggarwal, Manager, SEBI.

Versus

1. **Brssha Plantations Ltd.**
a company incorporated Under the Companies Act, 1956, having its Registered officer at:
Shop No. 2, 76-E, Vaishali, Palam Dabri Road,
New Delhi
And also having its office at:
72, Adharshila Complex, South Gandhi Maidan,
Patna(Bihar)

.....Accused no.1
2. **Sh. Suman Kumar Singh (Director)**
S/o Sh.Hari Dayal Singh,
R/o A-3P, Delhi Police Apartments,
Mayur Vihar, Phase I, New Delhi.

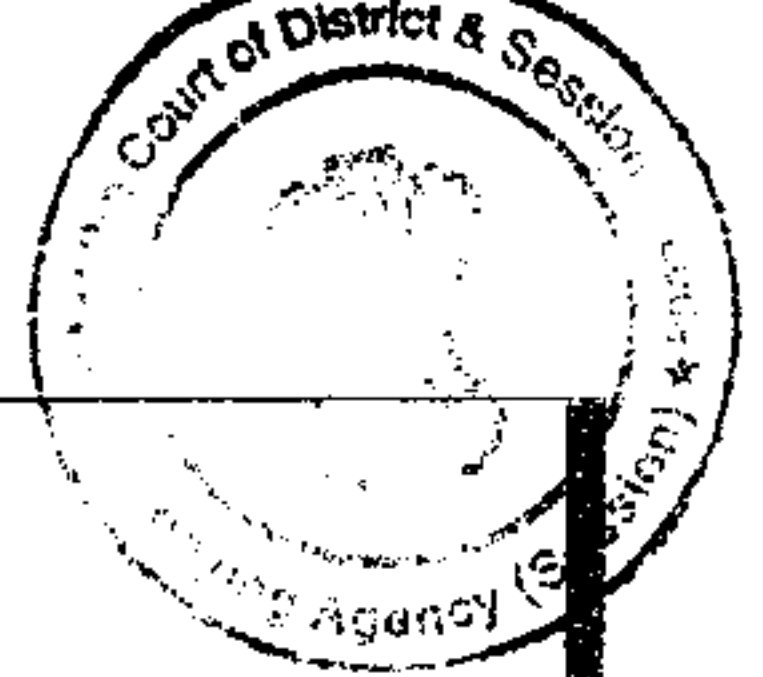
.....Accused no.2
3. **Sh. Bipin Kumar Singh (Director)**
S/o Sh.Hari Dayal Singh,
R/o A-3P, Delhi Police Apartments,
Mayur Vihar, Phase I, New Delhi.

.....Accused no.3

ATTACHED

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Ats Cryptic Agency (Delhi)



SEBI Vs. Brach's Plantation etc.

4. **Sh. Deo Nath Singh (Director),**
S/o Late Sh. Bipat Singh,
R/o 22-5, Delhi Police Apartment,
Mayur Vihar, Phase I, New Delhi

.....Accused no.4

5. **Ms Anita Devi (Director)**
D/o Sh. Rameshwar Parsad,
R/o Road No. 16, Damaria,
Gardani Bagh, PO Anishabad, Patna

.....Accused no.5

6. **Sh. Manoj Kumar Jha (Director)**
S/o Sh. Andesh Chandra Jha,
R/o D-26, Alaknanda, North Shastri Nagar,
Patna

.....Accused no.6

7. **Sh. Manoj Kumar (Director)**
S/o Sh. Jagdish Singh,
R/o A/82, Magistrate Colony,
Patna

.....Accused no.7

8. **Sh. Sandeep Parashar (Director)**
S/o Sh. Shambhu Prasad,
R/o Adarsh Nagar, Phulwari Sharief
Patna

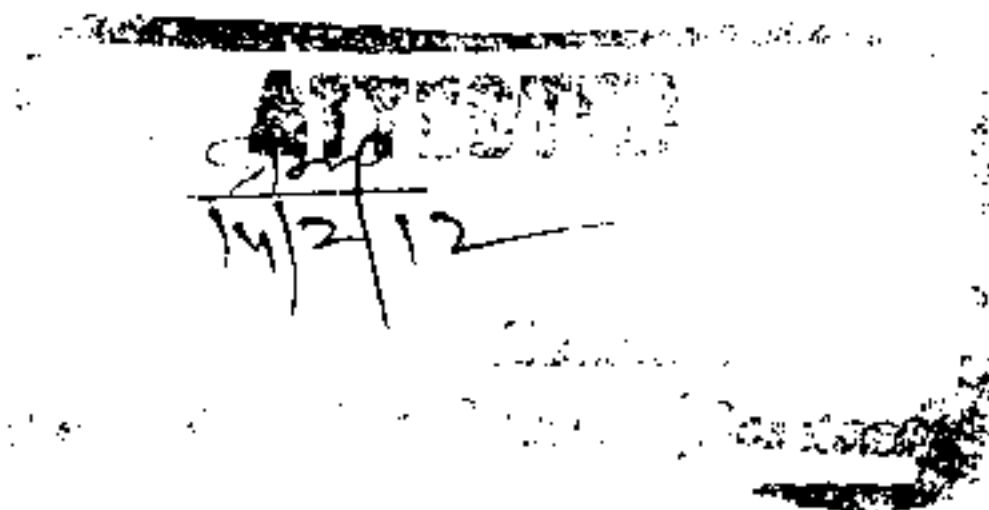
.....Accused no.8

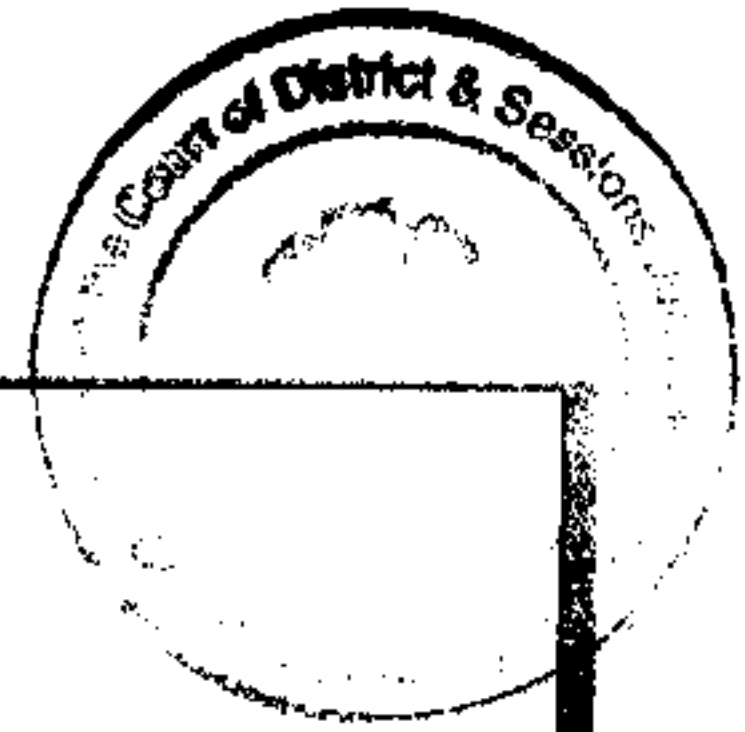
9. **Mrs. Archana Raman (Director)**
W/o Sh. Dhananjay Singh,
R/o Indrapuri Colony, Raja Bazar,
Patna

.....Accused no.9

10. **Sh. Shelender Kumar Singh (Director)**
S/o Sh. Bansi Prasad Singh,


5/7/12





SEBI Vs. Brusha Plantation etc.

R/o Bihiya Road, Piro, A-T, Post office,
Piro, Distt. Bhojpur-7

.....Accused no.10

11 **Sh. Sanjay Kumar (Director)**
S/o Late Kanhaiya Lal Singh,
R/o Nawa Garh, Kharkhari, Dhanbad

.....Accused no.11

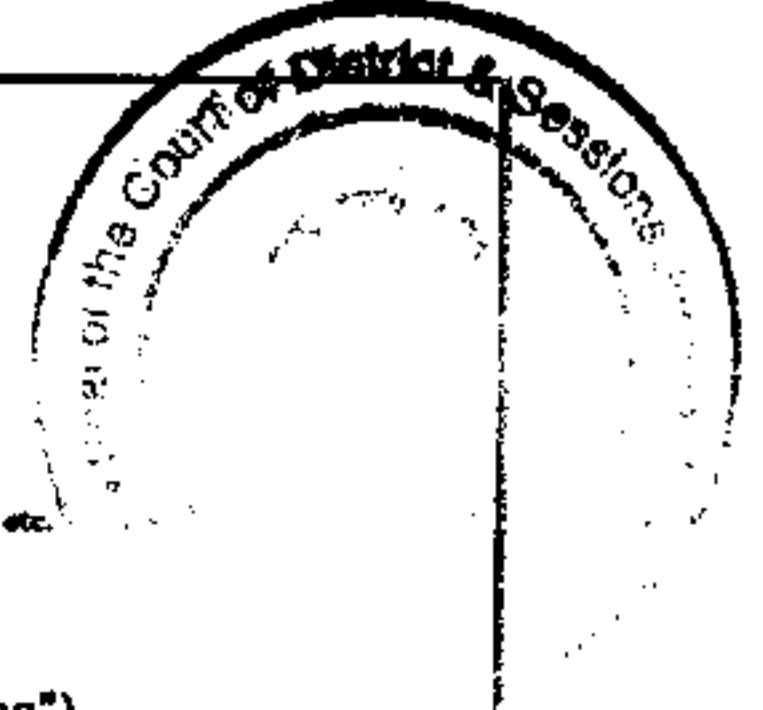
Date of Institution : 04.03.2004
Date of committal to Session Court : 14.12.2005
Date of pronouncement of judgment : 09.02.2012

Present: Sh. Sanjay Mann, Advocate, Counsel for SEBI.
Sh. Satya Narain, Advocate, Counsel for company
accused (A1)

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 March 4, 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

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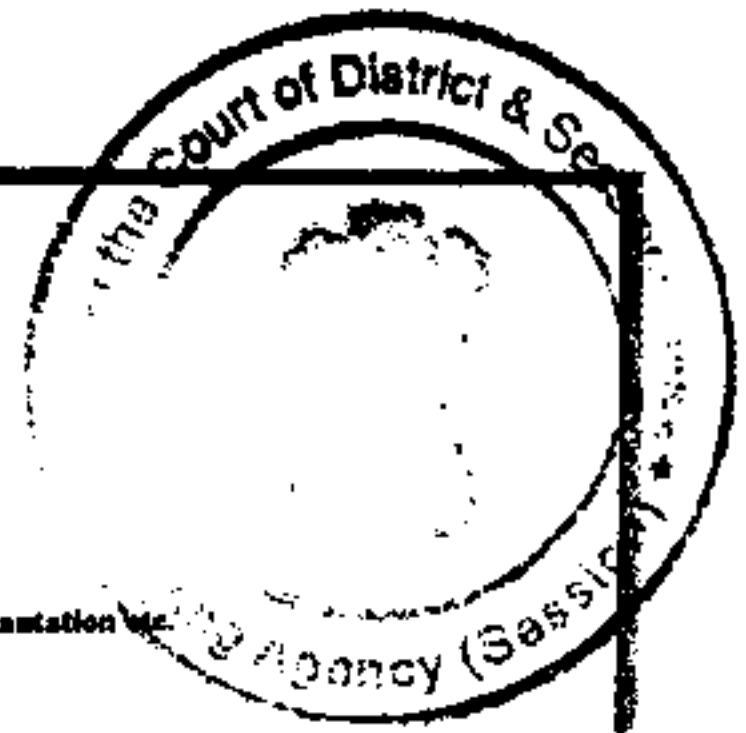


referred to as "the CIS Regulations" or "the said Regulations"), constituting offence punishable under Section 24(1) read with Section 27 of the SEBI Act.

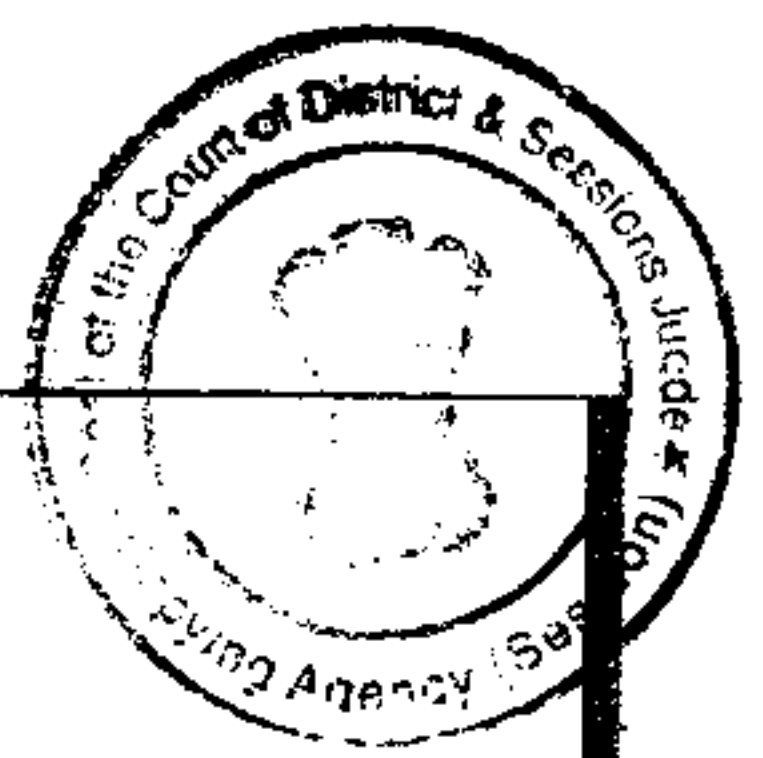
2. **Eleven** persons were arrayed as accused in the criminal complaint preferred under Section 200 Cr.P.C., they being Brssha Plantation Ltd. (hereinafter, "A1" or "the Company Accused"), accused No. 2 Sh. Suman Kumar Singh ("A2"), accused No.3 Sh. Bipin Kumar Singh ("A3"), accused No.4 Sh. Deo Nath Singh ("A4") accused No.5 Ms. Anita Devi ("A5"), accused No.6 Sh. Manoj Kumar Jha ("A6"), accused No.7 Sh. Manoj Kumar ("A7"), accused No.8 Sh. Sandeep Parashar ("A8"), accused No.9 Mrs. Archana Raman ("A9"), accused No.10 Sh. Shelender Kumar Singh ("A10") and accused No.11 Sh. Sanjay Kumar ("A11"). It is alleged that A2 to A11 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 provision 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 substantial amount 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.

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4. **Cognizance** on the complaint was taken by the learned ACMM vide order dated March 4, 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. District & 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 Additional Sessions Judge, Delhi.
6. Vide order dated November 20, 2009, A2, A3, A4, A7 & A10 had been discharged from all charges as offence had already been compounded. Vide order dated August 20, 2010, A5, A9 & A11 had been discharged from all charges as offence had already been compounded. Vide order dated February 8, 2011, A6 and A8 were declared proclaimed offenders on account of their non-appearance. Vide order dated January 5, 2012, a notice for the offence punishable under Section 24 of the SEBI Act was served upon the A1(company) through its AR Mr. Suman Kumar wherein he pleaded not guilty and claimed trial on behalf of company accused.
7. To prove its case, complainant has examined only one witness namely Ms. Versha Aggarwal, Manager, SEBI as CW1. Thereafter, AR of company accused was examined under Section 313 Cr.P.C. wherein he denied all the evidence led by complainant.



SEBI Vs. Braska Plantation etc.

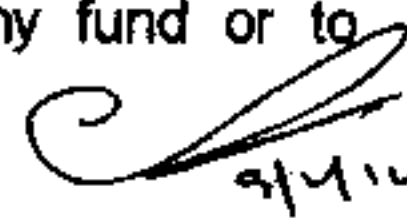
However, accused preferred not to lead any evidence in their defence.

8. I have heard arguments advanced by Sh. Sanjay Mann, Advocate, counsel for complainant and Sh. Satya Narain, Advocate, Counsel for A1 (company accused) and perused the record carefully.

9. **Learned** counsel appearing for accused persons vehemently contended that since company accused had not raised any fund from the general public, company accused had not committed any offence. It is further submitted that company accused had not submitted the WRR with the SEBI as company accused had not raised any fund. On the other hand, learned counsel appearing for complainant contended that since company accused had launched the collective investment schemes vide Ex. CW1/3, company accused had committed the offence in terms of Section 12(1B) of the SEBI Act.

10. It is undisputed fact that company accused was incorporated on June 2, 1997.

11. **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 venture capital funds or collective investment schemes including mutual funds, unless he obtained a certificate of registration from the Board in accordance with the regulations. Since the company accused was incorporated only in June, 1997, thus as per Section 12(1B) of the Act, company accused was not supposed to mobilize any fund or to


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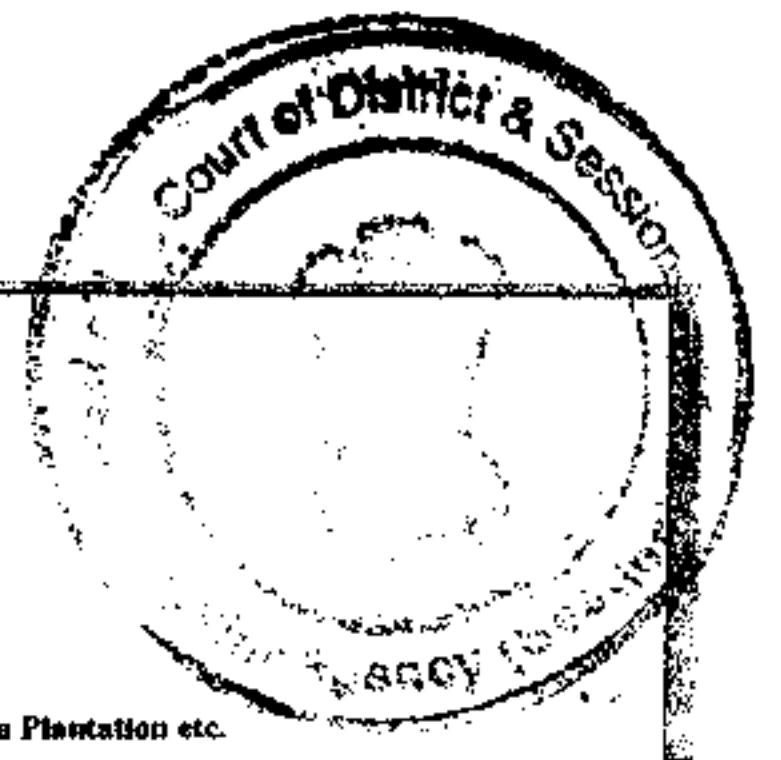
sponsor any CIS after January 25, 1997 unless it obtained a certificate of registration from the SEBI. Admittedly, company accused had not obtained any such certificate from the SEBI, thus company accused had violated the provisions of Section 12(1B) in the year 1997 itself by sponsoring or launching CIS without obtaining certificate of registration from the SEBI.

12. It is admitted case of the company accused that company accused had sent a letter dated March 28, 1998 and the same is exhibited as Ex. CW1/3. In the said letter, company accused had also furnished the brochures of the collective investment scheme to the SEBI. This proves that company accused had sponsored some collective investment schemes with an intention to raise funds from general public. Since, the company accused had sponsored the schemes by issuing brochures with an intention to raise funds from general public without obtaining the certificate of registration from SEBI, company accused had committed the violation in terms of Section 12(1B) of the SEBI Act. Mere fact that no person had responded to the scheme launched by the company accused is not sufficient to exonerate the company accused as company accused had committed the violation by launching/sponsoring the CIS in violation of Section 12 (1B) of the Act.

13. It is undisputed fact that CIS Regulations were notified w.e.f October 15, 1999 and as per Regulation 5 of the CIS Regulations, any person who was operating the collective investment schemes has to make an application to the Board within two months from the date of

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SEBI Vs. Brasha Plantation etc.

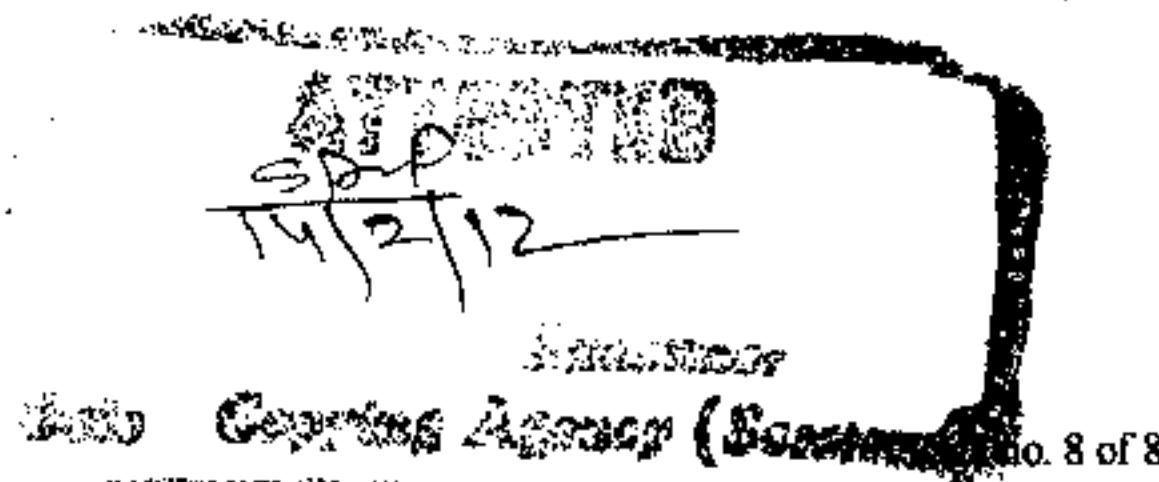
regulations to seek registration of certificate. But admittedly, in the present case, company accused had not moved any such application. Since, company accused had not moved any application in accordance with regulation 5 of the CIS Regulations, thus, as per Section 73 of CIS Regulations it was the duty of company accused to submit the winding up and repayment report with the SEBI on prescribed format. Admittedly, company accused had not submitted any such report with the SEBI, thus, company accused had not only violated Regulation 5 but also violated Regulation 73 of the CIS Regulations.

14. **Pondering** over the ongoing discussion, I am of the considered opinion that complainant has succeeded to prove that company accused (A1) had launched CIS in violation of Section 12 (1B) of the SEBI Act and also violated Regulation 5 & Regulation 73 of CIS Regulations which is punishable under Section 24 (1) of the SEBI Act. Thus, I hereby hold A1 M/s Brasha Plantation guilty for the offence punishable under Section 24 (1) of the SEBI Act.

**Announced in the open Court
on this 9th day of February 2012**

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

*Copy given to the Convict
in open Court at 10/2/12*



CC No. 72/10

Copy to the Convict (Sent) No. 8 of 8



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

**Complaint Case No. 72 of 2010
ID No: 02401R5190032004**

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, Ms. Versha Aggarwal, Manager, SEBI.

Versus

Brssha Plantations Ltd.

a company incorporated Under the Companies Act, 1956, having its Registered officer at:
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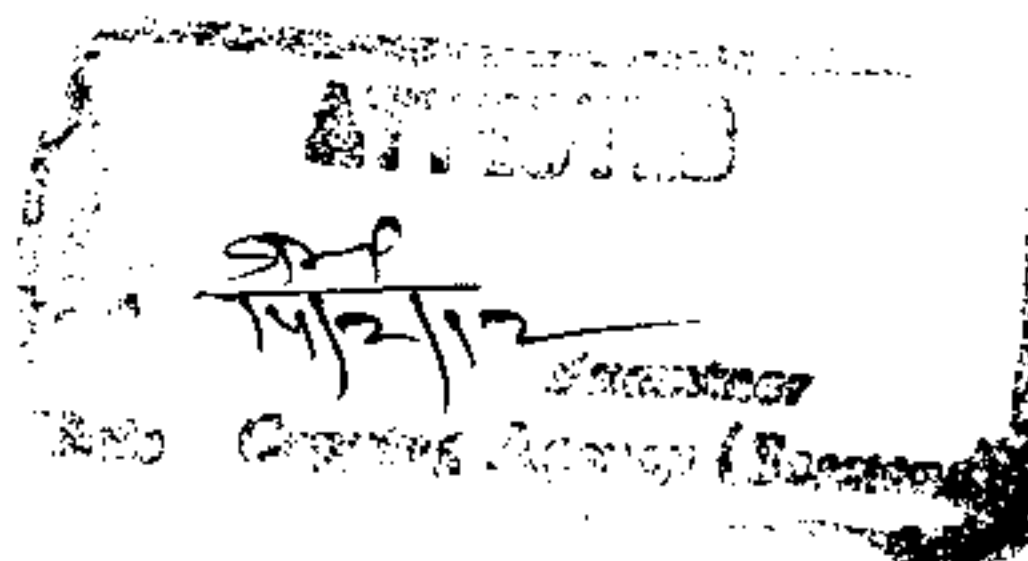
.....Convict

**Present: Sh. Sanjay Mann, Advocate, Counsel for SEBI.
Sh. Satya Narain, Advocate, Counsel for company
accused (A1)**

ORDER ON THE POINT OF SENTENCE(ORAL):

1. **Vide** separate judgment A1 i.e. Company accused has been held guilty for the offence punishable under Section 24 (1) of the SEBI Act.
2. **Learned** counsel appearing for convict requests for a lenient

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view on the ground that company accused had not mobilized any fund from general public and had only launched the collective investment schemes. Learned counsel appearing for complainant fairly conceded that company accused (convict) had not raised any fund from general public.

3. I have heard Counsel for both the parties, perused the record carefully and gave my thoughtful consideration to their submissions.

4. **Considering** the submissions of both parties, I am of the opinion that ends of justice will be met if some token amount is imposed as fine. Accordingly, I hereby impose a fine of ₹ 5,000/- upon the company accused (convict) for the offence punishable under Section 24(1) of the SEBI Act.

5. **Fine** amount is paid.

6. **Copy** of judgment along with order on the point of sentence be given to the convict/its counsel free of cost.

7. **Since** accused no.6 and 8 are proclaimed offenders, file be consigned to record room with direction that same be revived as and when they are apprehended.

*Announced in the open Court
on this 9th day of February 2012*

(PAWAN KUMAR JAIN)
ADDITIONAL SESSIONS JUDGE-01

CENTRAL/THC/DELHI

*Copy given to the Convict
in open Court at 10/2/12*

