

IN THE COURT OF CHIEF METROPOLITAN MAGISTRATE, TIS

HAZARI COURTS, DELHI.

CC NO:-----2003

127
15/12/03

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.

CC 82
28/8/05
...COMPLAINANT

VERSUS

1. M/s DNS Agrotech Ltd.
Having its Resgitered Office at
30, Phuto Road,
New Loni Shahadhra,
Delhi-110032.

By 26/12 ACACR 13
5 DEC 2011
NOT VERIFIED

2. Sh. Dharmendra Malik
(Director/Promoter)
S/o Sh. Harpal Singh,
New Pasti Patti,
Chaudhran Baraut (Meerut)

3. Sh. Sanjeev Kumar (Director/Promoter)
S/o Sh. Kedar Singh,
D-80, Mahendru Enclave,
Opposite Model Town,
Delhi-110009.

(P.O.)
Banyan

4. Shri Upendra (Director/Promoter)
S/o Sh. Dharampal Singh,
C-4/225, Yamuna Vihar,
Delhi-110053

5. Sh. Shyam Singh Rana
(Director/Promoter)
S/o Sh. Abhay Ram,
Vill. & Post Dhah,
Meerut (U.P.)

6. Ms. Bhagwati Devi (Director/Promoter)
Nw Basti Pati,
Chodhran Baraut.

Died

Lead.
Abaker 15/12/03

ATTESTED

Date Copying Agency (Sealed)



2

Ms. Brahmla Devi (Director/Promoter)
Vill. & PO Khera,
Mastan Muzaffar Nagar

.....ACCUSED

8. Ms. Balesh Devi (Director/Promoter)
Village & PO Kishan Pur,
Baraut, Meerut, U.P.

COMPLAINT UNDER SECTION 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:

ATTESTED
Examined by
Date Copying Agency (Seal)



CC No. 40/10

Item no. 6

29.11.2011

Present: Sh. Sanjay Mann, Advocate, Counsel for SEBI.
Sh. Akshay Goel, Advocate, Counsel for accused
No. 1, 2, 5 & 8
Sh. C. R. Jagar, Advocate, Counsel for accused
No. 3, 4 & 7
Accused no. 6 is dead
Accused no. 1 is company and represented by accused

no.2

Vide separate judgment dated November 29, 2011, A1 i.e. Company accused i.e M/s DNS Agrotech Ltd., A2 Sh. Dharmendra Malik, A3 Sh. Sanjeev Kumar, A4 Sh. Upendra and A5 Sh. Shyam Singh Rana have been held guilty for the offence punishable under Section 24 (1) read with Section 27 of the SEBI Act.

Arguments heard on the point of sentence.

Vide separate order on the point of sentence, a fine of ₹ 15,000/- is imposed upon each of convicts i.e convict No.1 to 5 in default convict nos. 2 to 5 shall undergo three months simple imprisonment for the offence punishable under Section 24 (1) read with Section 27 of the SEBI Act.

Fine amount is paid.

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

File be consigned to record room.


(PAWAN KUMAR JAIN)
Additional Sessions Judge-01,
Central/THC/Delhi





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

**Complaint Case No. 40 of 2010
ID No: 02401R0304412003**

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 Asstt. General Manager, SEBI, Ms. Puja Meerchandani,

Versus

1. **M/S DNS Agrotech Ltd.,**
having its Registered office at:
30, Phuto Road,
New Lohi Shahadhra,
Delhi

.....Accused no.1

2. **Sh. Dharmendra Malik**
(Director/Promoter)
S/o Sh. Harpal Singh,
New Pasti Patti,
Chaudhran Baraut (Meerut)

.....Accused no.2

3. **Smt. Sanjeev Kumar**
(Director/Promoter)
S/o Sh. Kedar Singh,

TESTED
[Signature]
Date: 29/11/11



SEBI Vs. D. N. S. AGROTECH LTD. & OTHERS

D-80, Mahendru Enclave,
Opposite Model Town,
Delhi-110009.

.....Accused no.3

4. **Sh. Upendra**
(Director/Promoter)
S/o Dharam Pal Singh
C-4/225, Yamuna Vihar,
Delhi

.....Accused no.4

5. **Sh. Shyam Singh Rana**
(Director/Promoter)
R/o Sh. Abhay Ram,
Village & Post Dhah,
Meerut

.....Accused no.5

6. **Ms. Bhagwati Devi**
(Director/Promoter)
Nw Basti Pati,
Chodhran Baraut

.....Accused no.6

7. **Ms. Brahmla Devi**
(Director/Promoter)
Village & PO Khera,
Mastan Muzaffar Nagar

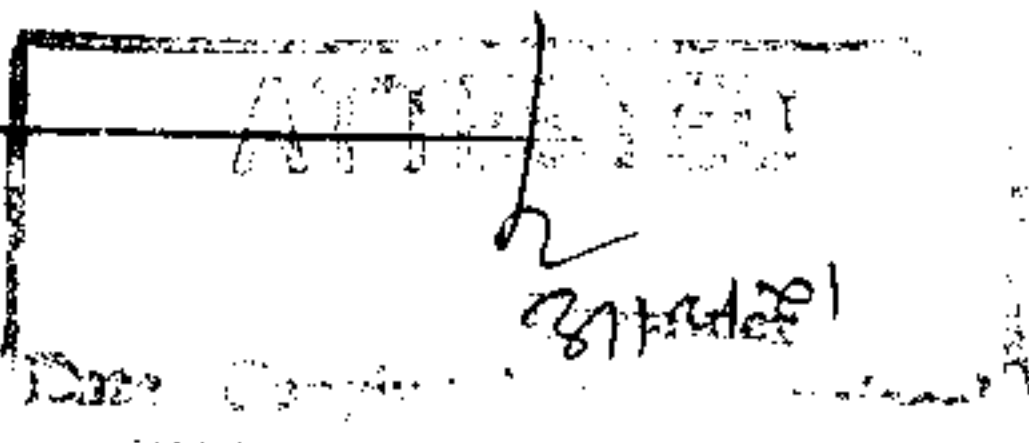
.....Accused no.7

8. **Ms. Balesh Devi**
(Director/Promoter)
Village & PO Kishan Pur,
Baraut, Meerut, U.P.

.....Accused no.8

Page no. 2 of 12

CC No. 40/10





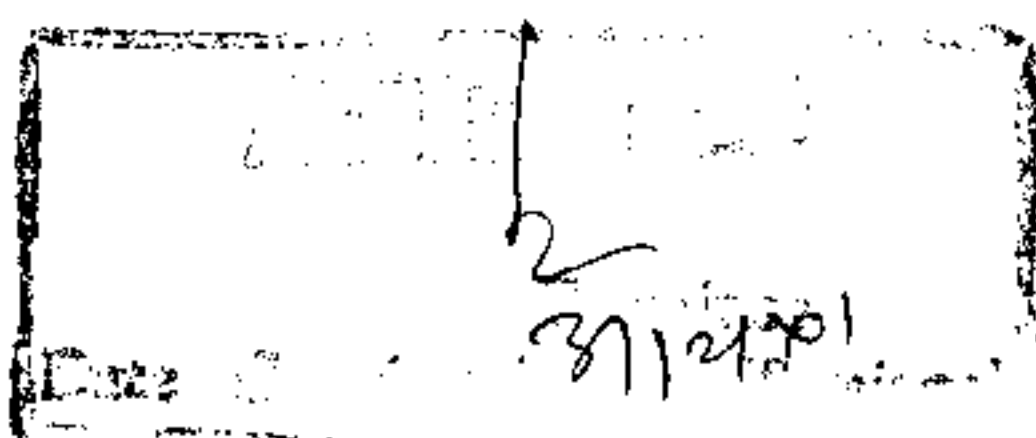
Date of Institution : 15.12.2003
Date of committal to Session Court : 13.05.2005
Date of pronouncement of judgment : 29.11.2011

Present: Sh. Sanjay Mann, Advocate, Counsel for SEBI.
Sh. Akshay Goel, Advocate, Counsel for accused
No. 1, 2, 5 & 8
Sh. C. R. Jagar, Advocate, Counsel for accused
No. 3, 4 & 7

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 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) 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. Eight persons were arrayed as accused in the criminal complaint preferred under Section 200 Cr.P.C., they being M/s DNS Agrotech Ltd. ("A1"), accused No. 2 Sh. Dharmendra Malik ("A2"),





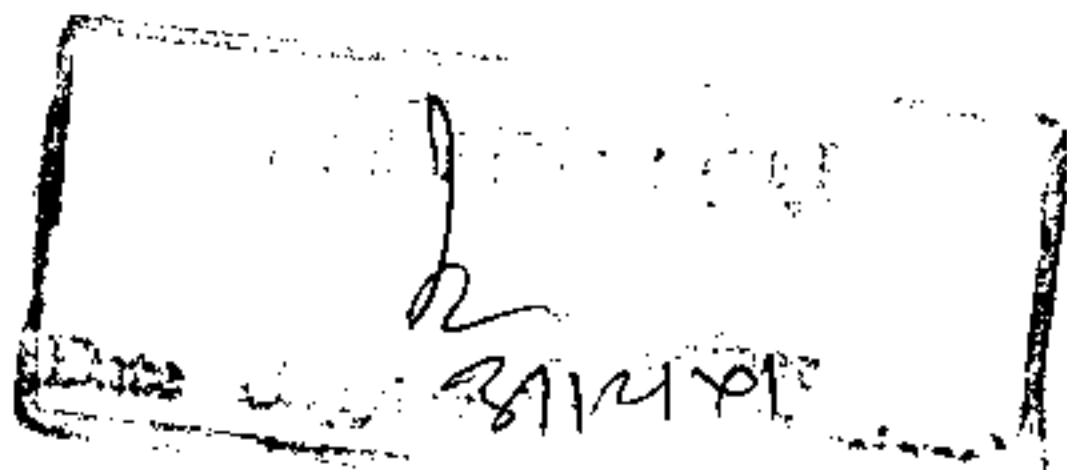
SEBI Vs. D. N. S. AGROTECH LTD. & OTHERS

accused No. 3 Sh. Sanjeev Kumar ("A3"), accused No.4 Sh. Upendra ("A4"), accused No. 5 Sh. Shyam Singh Rana ("A5"), accused No. 6 Ms. Bhagwati Devi ("A6"), accused No. 7 Ms. Brahmla Devi ("A7") and accused No. 8 Ms. Balesh Devi ("A8"). It is alleged that A2 to A8 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 various Collective Investment Schemes (CIS) and raised approximate amount of ₹ 1,55,878/- 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 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 December 15, 2003 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



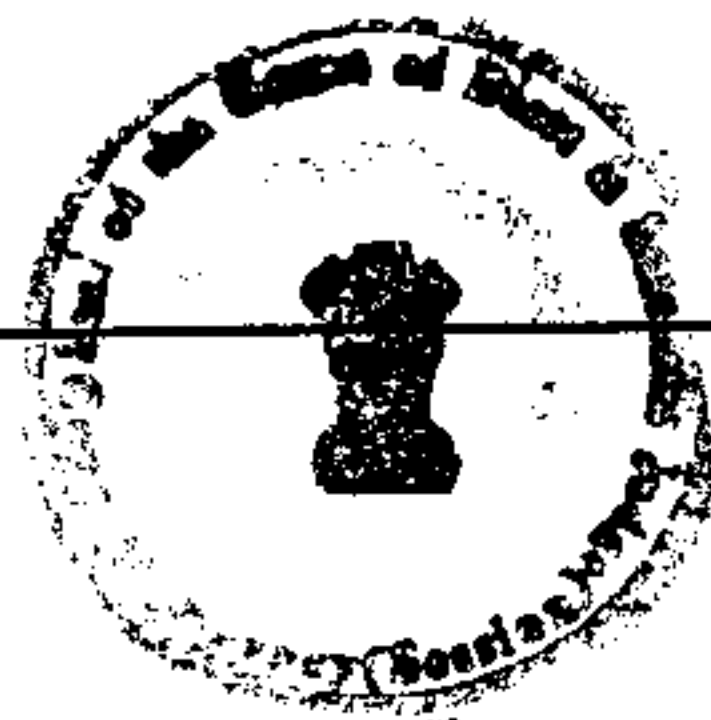


SEBI Vs. D. N. S. AGROTECH LTD. & OTHERS

Hon'ble High Court, under orders of the Ld. Distt. & Sessions Judge, this case was transferred on May 13, 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 November 15, 2007, proceedings qua A6 were abated on account of her death. Thereafter, vide order dated March 26, 2009, a notice for the offence punishable under Section 24 read with section 27 of the SEBI Act was served upon the A1(company) and A2 to A8 except A6, proceedings qua whom had already been abated.

7. To prove its case, complainant has examined only one witness named Ms. Puja Meerchandani, Asstt. General Manager, SEBI. Thereafter, all accused persons except A6 were examined under Section 313 Code of Criminal Procedure. In his statement under Section 313 Cr.P.C., A2 took the plea that company accused was floated at the behest of Character Accountant and no money was mobilized from the general public. It was stated that the money was invested by the directors of the company accused and since company accused was running in loss, it was closed. A3 to A5 denied all the evidence led by the complainant and stated that they did not know anything about this case and company accused whereas A7 & A8 also denied all the evidence led by the complainant and stated that they had no connection with the company accused and they did not know anything about the company accused. However, accused persons failed to lead evidence in their defence.



SEBI Vs. D. N. S. AGROTECH LTD. & OTHERS

8. I have heard arguments advanced by Sh. Sanjay Mann, Advocate, Counsel for complainant and Sh. Akshay Goel, Advocate, Counsel for A1, 2, 5 & 8 and Sh. C.R. Jagar, Advocate, Counsel for A3, A4 & A7 and perused the record carefully.
9. Learned counsel appearing for A7 & 8 vehemently contended that there is no evidence on record to show that they were the directors of the company accused or they were holding any position in the company accused. Thus, it was argued that they cannot be held guilty for the violation, if any committed by the company accused. Learned counsel appearing for A1 to A5 contended that company accused had not committed any violation because the funds were mobilized through directors of company accused and not from the general public. It was further contended that company accused had already returned the amount to the investors/directors who invested the funds in the company accused and company accused is not in operation, thus it urged that company accused had not committed any violation of the provisions of SEBI Act. It was stated that since company accused had not committed any violation, A2 to A5 cannot be held liable for the acts of the company accused.
10. Per contra learned counsel appearing for complainant sagaciously contended that A2 to A5 were the directors of the company accused and this fact is admitted by the company accused in its letter Ex. CW1/5 and CW1/6 and their name is also mentioned in the Memorandum and Articles of Associations of the company accused. It was further contended that since company accused was



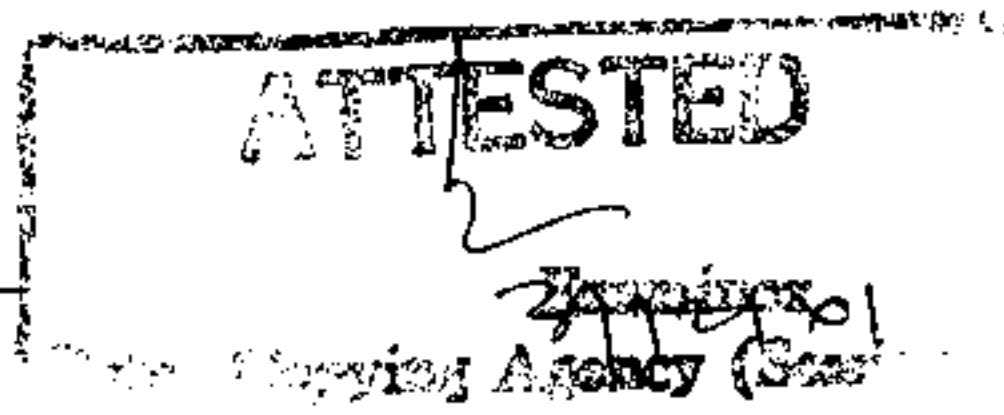
SEBI Vs. D. N. S. AGROTECH LTD. & OTHERS

incorporated on April 23, 1997, company accused was not supposed to mobilize any fund unless it obtained a certificate of registration in terms of Section 12(1B) of the SEBI Act. It was argued that it is immaterial whether company accused had mobilized funds through friends, relatives or its directors. It was further stated that since A2 to A5 were the directors of company accused, they are also liable for the said violations in terms of Section 27 of the SEBI Act. However, he fairly conceded that there is no evidence against A6 to A8 on record.

11. From the submission raised by the counsel for the parties, first question arises as to whether company accused had committed any violation at the time of mobilizing funds or not?

12. It is undisputed fact that company accused was incorporated on April 23, 1997. Section 12(1B) was inserted in SEBI Act w.e.f January 25, 1995 by virtue of Amendment Act in 1995. The effect of inserting Section 12(1B) is that after January 25, 1995 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. It means that after January 25, 1995, no person can sponsor or cause to be sponsored or carry on or caused to be carried on any CIS unless he obtains a certificate of registration from the Board in accordance with the regulations. Since in the instant case, company accused was incorporated only on April 23, 1997, company accused, in terms of Section 12(1B) of the Act, was not supposed to launch CIS unless company accused obtained a certificate of registration from the SEBI.

[Handwritten signature]
29/11





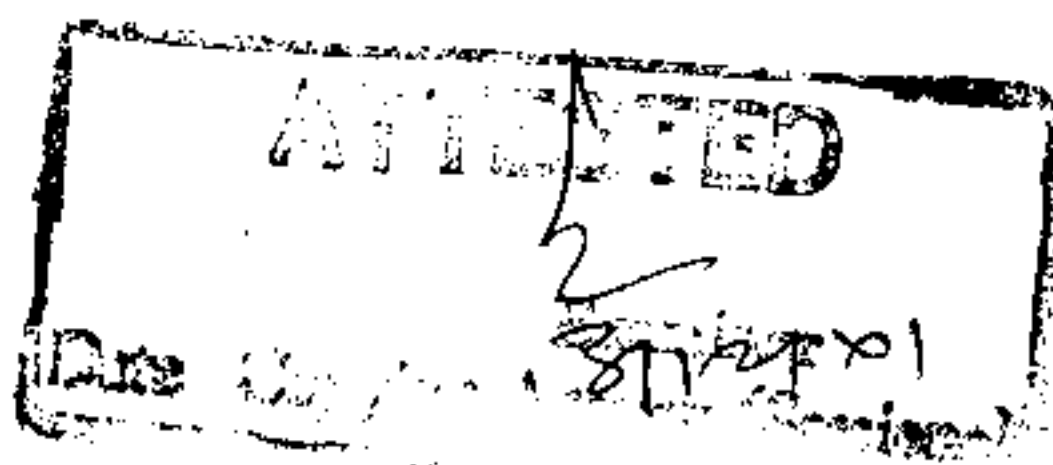
SEBI Vs. D. N. S. AGROTECH LTD. & OTHERS

Since company accused had not obtained any such certificate of registration at the time of mobilizing funds by floating various CIS, company accused had violated Section 12(1B) of the Act at time itself.

13. Under proviso to Section 12(1B) of SEBI Act, relaxation has been provided to certain schemes from obtaining registration of certificate from SEBI provided such Collective Investment Schemes must be in operation immediately before the insertion of Section 12(1B) in the SEBI Act, till the time regulations were notified. In other words, if any Collective Investment Scheme was in operation just before January 25, 1995, such CIS were permitted to continue to operate till such time regulations were made by the SEBI. Thus, this relaxation was available only to those schemes which were in operation prior to January 25, 1995, when Section 12(1B) of Act was inserted. Since in the instant case, company accused was incorporated only on April 23, 1997, company accused was not entitled for the relaxation as provided under proviso to Section 12(1B) of the Act.

14. Company accused in its letter Ex. CW1/5 and CW1/6, admitted that company accused had mobilized funds to the tune of ₹ 1,55,878/-. Since said fund was mobilized in the year 1997-1998 without obtaining the certificate of registration, thus company accused has violated Section 12(1B) of the Act which is punishable under Section 24 of SEBI 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





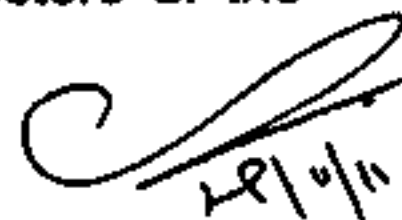
SEBI Vs. D. N. S. AGROTECH LTD. & OTHERS

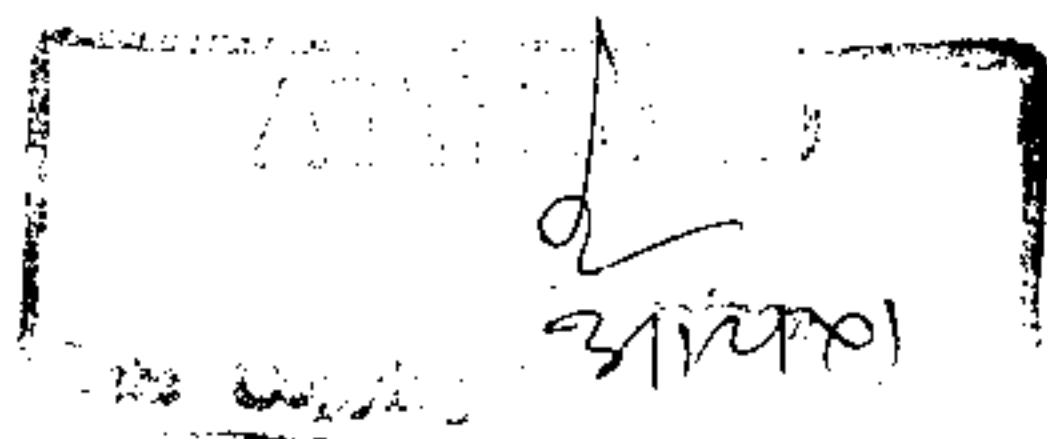
immediately prior to the commencement of these Regulations was operating any scheme, shall make an application to the Board for the grant of certificate within two months from the date of regulations. Admittedly, company accused had not made an application in accordance with regulation 5 of the CIS Regulation. According to Regulation 73, if the company failed to make any such application, company shall wind up the existing scheme and send the information to the SEBI relating to the scheme and the amount repayable to each investors and the manner in which amount is determined and was returned to the investors and shall also file winding up and repayment report with the SEBI on the prescribed format.

16. Admittedly, company accused had not moved an application for obtaining the certificate of registration for the scheme launched by the company accused during the period 1997-98. Since, company accused failed to move an application in terms of Regulation 5 of the CIS regulations, company accused was bound to submit the WRR to the SEBI in terms of regulations 73 of CIS Regulations but admittedly, company accused had not filed such WRR with the SEBI. Thus, company accused has also violated the provisions of CIS Regulations which is again punishable under Section 24 (1) of the SEBI Act.

17. Now coming to the contention whether A2 to A5 were liable for the violations committed by company accused or not.

18. It is undisputed fact that company accused had sent the letters Ex. CW1/5 & CW1/6 to the SEBI. In both letters, company accused categorically stated that A2 to A5 were the directors of the


28/11/11





SEBI Vs. D. N. S. AGROTECH LTD. & OTHERS

company accused. Even their name has been mentioned as the first directors of the company accused in the Memorandum and Articles of Associations of company accused. It becomes clear that A2 to A5 were the directors of the company accused at the time when company accused had mobilized funds through CIS. Though A3 to A5 took the plea that they had no concern with the company accused, yet during the trial, they failed to lead any evidence in this regard. In the absence of any evidence, their version does not inspire any confidence. However, from the testimony of CW1, it becomes clear that A2 to A5 being the directors were incharge of, and responsible, to A1 for the conduct of its business. During the trial, accused persons failed to lead any evidence. In the absence of any contrary evidence, I do not find any reason to disbelieve the testimony of CW1. Being the directors, A2 to A5 were incharge of, and responsible, to A1 for the conduct of its business. Since, they were directors of the company accused at the time of mobilizing funds in violation of Section 12(1B) of the SEBI Act and when the company accused violated the provisions of CIS regulations, thus they were incharge of, and responsible, to A1 for the conduct of its business and are also liable for the violations committed by company accused in terms of Section 27 of SEBI Act.

19. I do not find any substance in the contention raised by learned counsel that since company accused had mobilized funds through its directors, company accused had not violated any provisions of SEBI Act. It is not the question whether company accused had mobilized the funds through friends, relatives or its directors. The real question is whether company accused had complied with the mandatory provisions of law at the time of floating CIS or not. As discussed



SEBI Vs. D. N. S. AGROTECH LTD. & OTHERS

above, company accused had violated the provision of Section 12(1B) of SEBI Act as well as Regulations 5 & 73 of CIS Regulations, which are punishable under Section 24(1) of SEBI Act.

20. Now coming to the contention qua A6 to A8. Admittedly their name is not mentioned either in Ex. CW1/5 & CW1/6 which were sent by the company accused to SEBI. Nor their name is mentioned in the Memorandum and Articles of Associations of company accused. During the trial, complainant failed to produce any evidence to show that A6 to A8 were holding any position in the company accused. Thus, there is no evidence on record to prove that A6 to A8 were incharge of, and responsible, to A1 for the conduct of its business.

21. 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 CIS in violation of Section 12(1B) of the SEBI Act and also violated regulation no. 5 & 73 of CIS Regulations. Complainant has also established that A2 to A5 being the directors of company accused were in charge of, and responsible to, the company accused for the conduct of its business at the time of mobilizing funds, thus are also liable for the said violations in terms of Section 27 of the Act. Thus, I hereby hold A1 i.e. M/s DNS Agrotech Ltd., A2 Sh. Dharmendra Malik, A3 Sh. Sanjeev Kumar, A4 Sh. Upendra and A5 Sh. Shyam Singh Rana guilty for the offence punishable under Section 24 (1) read with section 27 of the SEBI Act. However, complainant has failed to establish beyond the shadow of all reasonable doubts that A6 to 8 were the directors of company accused and were in charge of,




SEBI Vs. D. N. S. AGROTECH LTD. & OTHERS


and responsible to, the company accused for the conduct of its business at the time of mobilizing funds, thus I acquit them from all charges. It is pertinent to mention here that proceedings qua A6 had already been abated on account of her death.

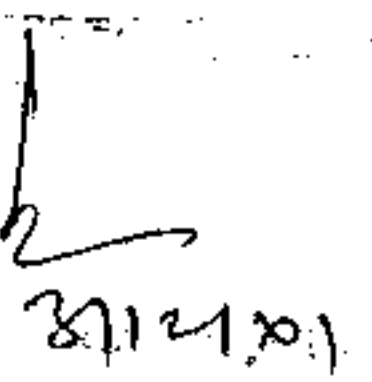
Announced in the open Court.

On this 29th day of November 2011


(PAWAN KUMAR JAIN)
Additional Sessions Judge-01,
Central/THC/Delhi

*Copy given to the Convicts
in open Court at f.c.*


30/11/11


30/11/11

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

**Complaint Case No. 40 of 2010
ID No: 02401R0304412003**

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 Asstt. General Manager, SEBI, Ms. Puja Meerchandani,

Versus

1. **M/S DNS Agrotech Ltd.,
having its Registered office at:
30, Phuto Road,
New Lohi Shahadhra,
Delhi**

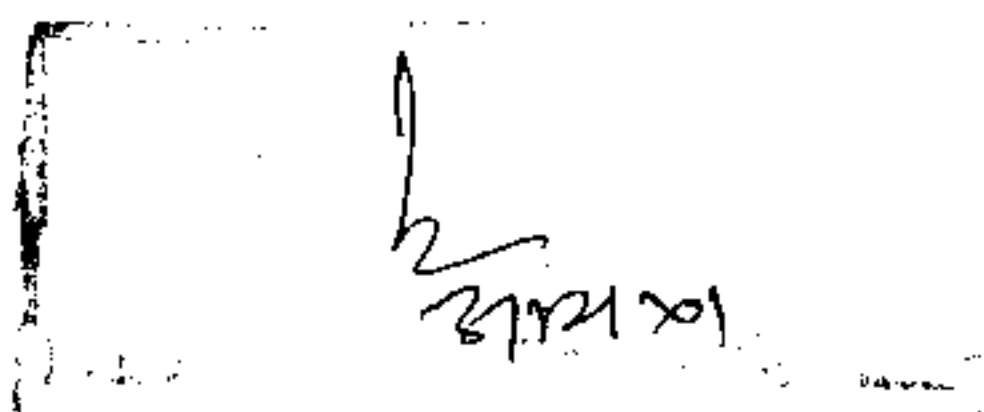
.....Convict no.1

2. **Sh. Dharmendra Malik
(Director/Promoter)
S/o Sh. Harpal Singh,
New Pasti Patti,
Chaudhran Baraut (Meerut)**

.....Convict no.2

3. **Smt. Sanjeev Kumar
(Director/Promoter)
S/o Sh. Kedar Singh,
D-80, Mahendru Enclave,
Opposite Model Town,
Delhi-110009.**

.....Convict no.3



4. **Sh. Upendra**
(Director/Promoter)
C-4/225, Yamuna Vihar,
Delhi

.....Convict no.4

5. **Sh. Shyam Singh Rana**
(Director/Promoter)
R/o Sh. Abhay Ram,
Village & Post Dhah,
Meerut

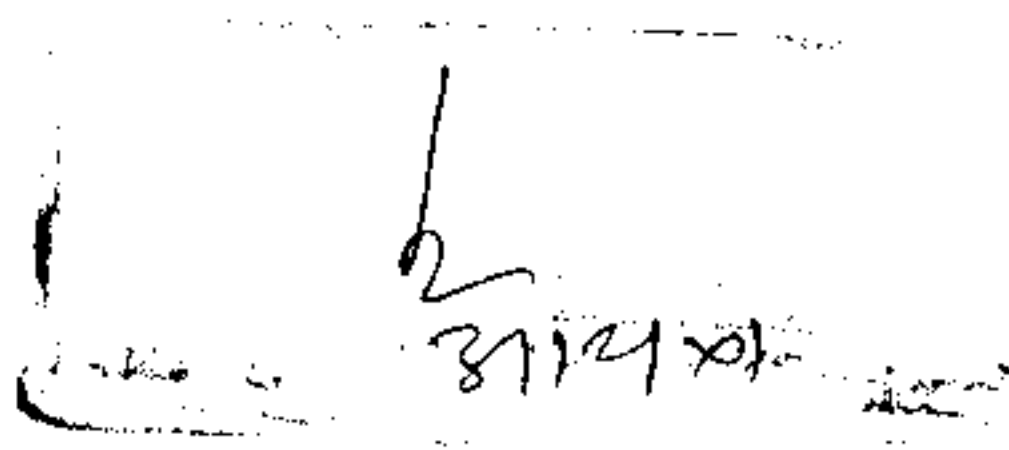
.....Convict no.5

Present: **Sh. Sanjay Mann, Advocate, Counsel for SEBI.**
Sh. Akshay Goel, Advocate, Counsel for convict
No. 1, 2 & 5
Sh. C. R. Jagar, Advocate, Counsel for convict
No. 3 & 4

ORDER ON THE POINT OF SENTENCE(ORAL):

1. **Vide** separate judgment dated November 29, 2011, A1 i.e. Company accused i.e M/s DNS Agrotech Ltd., A2 Sh. Dharmendra Malik, A3 Sh. Sanjeev Kumar, A4 Sh. Upendra and A5 Sh. Shyam Singh Rana 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 convict no. 5 is a person of about 80 years old and has no source of income whereas convict no. 2 to 4 are sole bread earner of their respective family and there is no previous


29/1/12


31/1/12



SEBI Vs. D.N. S. AGROTECH LTD & OTHERS

conviction against them on record. It is further stated that no investor had made any complaint with the SEBI at any point of time, thus they request for a lenient view. On the other hand, learned counsel appearing for complainant requests for substantial punishment on the ground that company accused had not refunded the amount to the investors. However, he fairly conceded that SEBI had not received any complaint from any of investors.

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

4. Considering the quantum of amount mobilized by the company accused and the fact that there is no previous conviction against the convicts, I am of the opinion that ends of justice will be met if convicts are burdened with fine. Accordingly, I hereby impose a fine of ₹ 15,000/- upon each of convicts i.e convict No.1 to 5 in default convict nos. 2 to 5 shall undergo three months simple imprisonment for the offence punishable under Section 24 (1) read with Section 27 of the SEBI Act.

5. Fine amount is paid.

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

Announced in the open Court.

On this 29th day of November 2011

(PAWAN KUMAR JAIN)
Additional Sessions Judge-01,
Central/THC/Delhi

*Copy given to the convicts
in open Court at fee.*

CC No. 40/10

Page no. 3 of 3

