

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

**Complaint Case No. 45/10  
ID No: 02401R0304962003**

**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 Mr. Manish Vashist, AGM, SEBI.

**.....Complainant**

**Versus .**

1. **M/S Gujarat Forestry India Ltd. Company** incorporated under the Companies Act, 1956, having its Regd. Office at 85-B, Kharaya Pokhara, Medical Road, Gorakhpur.

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

2. **Sh. Arun Kumar Srivastav** s/o Sh. Kedarlal Srivastav, Director of accused No.1, R/o: Vill. Bhagwanpur, P.O. Pipi Ganj, Gorakhpur.

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

3. **Sh. Rajkaran Batham** s/o Sh. Fudai Lal, Director of Accused No.1, R/o H.No. 392, Rapti Nagar, Badarat Pur, Gorakhpur

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

4. **Sh. Umesh Chander Srivastav** s/o Sh. Lalji Lal Srivastav, Director of Accused No.1, R/o North Jatepur, Kali Mandir, PS

PD

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Gorakh Nath Cantt. Distt. Gorakhpur, U.P.

.....Accused no.4

5. Sh. Vinay Kumar Jha s/o Sh. Panchanand Jha, Director of Accused no.1, R/o PO Manbelakhas, FCI Colony, Gorakhpur, UP. *dead.*

.....Accused no.5

6. Sh. Rakesh Kumar Singh s/o Sh. Surya Deo Singh, Director of Accused No.1, R/o Vill. Pipra Devraj, PO Bhatni, Distt. Deoria

.....Accused no.6

7. Sh. Amarjit Kumar Sharma s/o Sh. Jai Ram Sharma, Director of Accused No.1, R/o Ganga Nagar, Basharatpur, PO Arogyamandir, Distt. Gorakhpur, U.P.

.....Accused no.7

- ✓8. Smt. Amina Khatun w/o Sh. Iqbal Ahmed, Director of Accused No. 1, R/o Vill. Pakarikhud, Distt. Padrauna. *pd*

.....Accused no.8

Date of Institution : 15.12.2003

Date of Committal : 17.05.2005

Date of pronouncement of judgment : 19.08.2011

Present: Sh. Sanjay Mann, Advocate for the SEBI  
Sh. Manish Sharma, Advocate, Counsel for accused  
no. 1, 2, 3, 6 & 7  
Accused no. 4 & 8 have already been declared  
Proclaimed offenders and proceedigs qua accused  
no.5 have already been abated.

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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 Sections 11B, 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 Gujarat Forestry India Ltd. Company (hereinafter, "A1" or "the Company Accused"), accused No. 2 Sh. Arun Kumar Srivastav ("A2"), accused No. 3 Rajkaran Batham ("A3"), accused No.4 Sh. Umesh Chander Srivastav ("A4"), accused No.5 Vinay Kumar Jha ("A5"), accused no. 6 Rakesh Kumar Singh ("A6"), accused no. 7 Sh. Amarjit Kumar Sharma ("A7") and accused no.8 Sh. Amina Khatun ("A8). It is alleged that A2 to A8 were Directors of the

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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 17.05.2005 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 25.07.2008, A4 was declared proclaimed offender while A8 was declared proclaimed offender vide order dated 28.05.2009 on account of their non-appearance. Thereafter, vide order dated 16.07.2009, a notice for the offence punishable under Section 24 read with section 27 of the SEBI Act was served upon the A1(company), A2,A3, A5,A6 and A7. Since A2 also represented A1 company accused, he also responded to the notice on behalf of company. All accused pleaded not guilty and claimed trial.

7. To prove its case, complainant has examined only one witness named CW1 Mr. Manish Vashist, AGM, SEBI, Thereafter, the above accused were examined under Section 313 Cr.P.C wherein above accused persons denied all the evidence led by complainant and submitted that they had no relations with the documents filed by the complainant as the said documents were neither sent nor executed by them and they have no knowledge about the documents relied upon by the SEBI. They preferred not

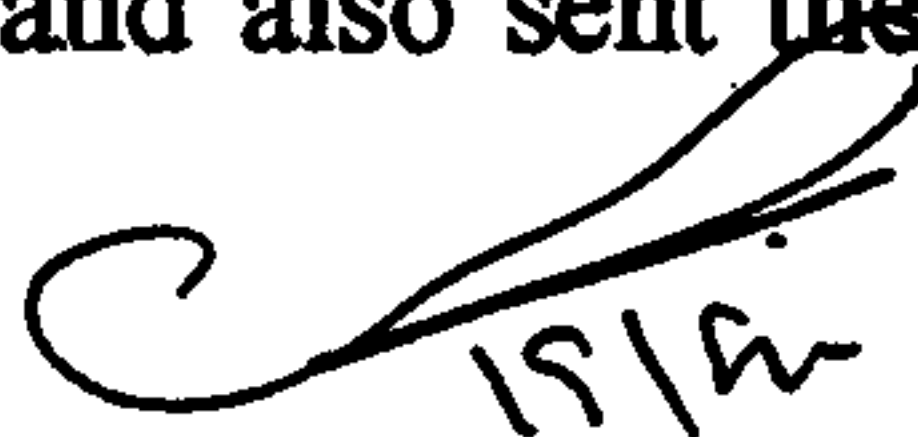
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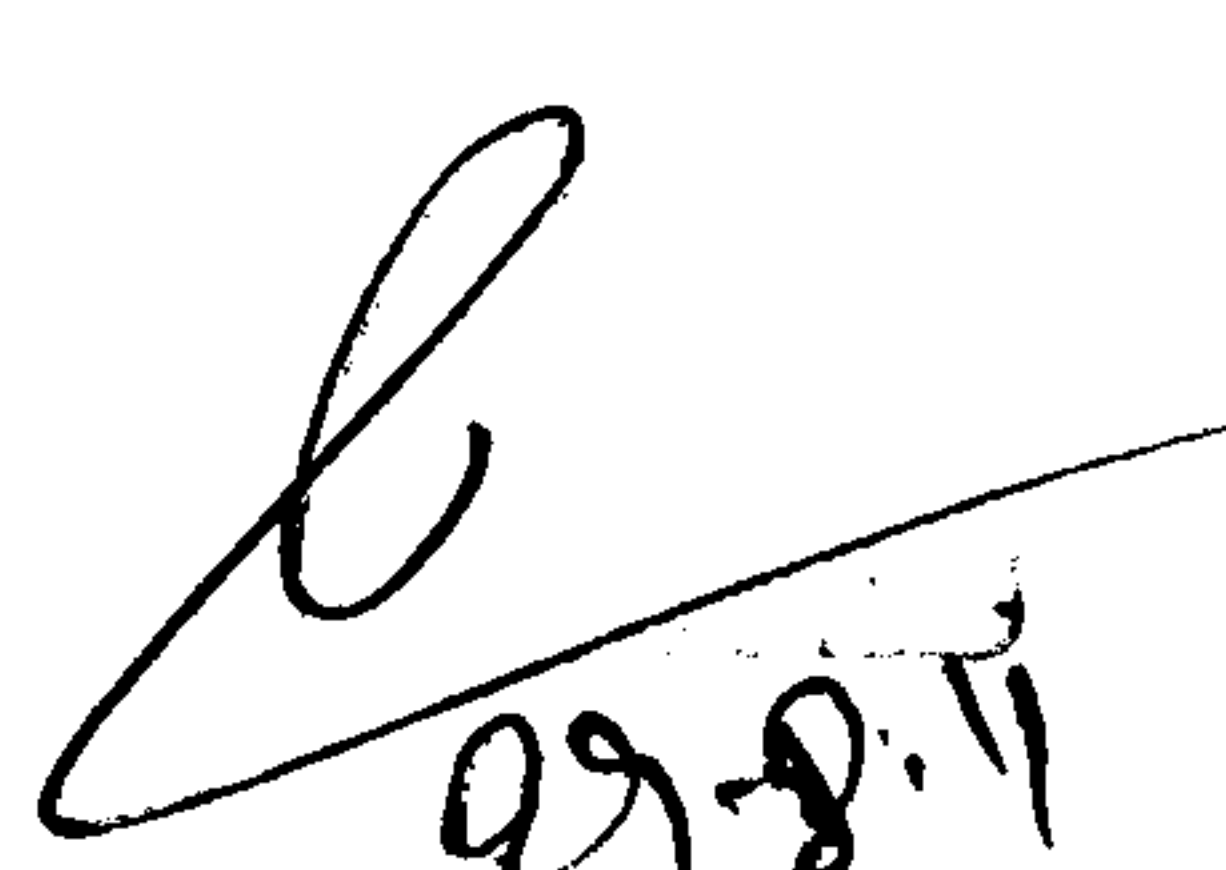
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**SEBI Vs. M/S Gujarat Forestry India Ltd. Company**

to lead any evidence in their defence.

8.           Thereafter, proceedings qua A5 were abated vide order dated 25.07.2011 on account of his death. .
9.           I have heard arguments advanced by Sh. Sanjay Mann, Advocate, counsel for complainant and Sh. Manish Sharma Advocate, counsel for A1, A2, A3, A6 & A7 and perused the record carefully.
10.          Learned Defence Counsel vehemently contended that there is no iota of evidence to establish that A6 and A7 were holding any position in the company accused, thus it was urged that they were not in-charge of, and responsible to, the company accused for the conduct of its business. Counsel for complainant fairly conceded that there is no documentary evidence in this regard.
11.          To rope A2 to A8 with the aid of Section 27 of the SEBI Act, complainant has relied upon the letter dated 15.01.1998, which is exhibited as Ex. CW1/E and the Memorandum and Articles of Association of accused company. Perusal of Ex. CW1/E reveals that company accused had sent certain information to the SEBI including the detail of its directors and also sent the

  
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copy of Memorandum and Articles of Association of the company. According to the information furnished by company accused, only A2 to A5 were directors in the company accused. Similarly, perusal of Articles of Association of the company accused reveals that A2 to A5 were the first directors of the company accused. It further reveals that A6 to A8 were holding some shares in the company accused. In other words, there is no evidence on record to show that A6 to A8 were holding any position in the company accused, thus there is nothing on record to establish that A6 to A8 were in-charge of, and responsible to, the company accused for the conduct of its business at the time of commission of alleged-violations. However, above documents prove that A2, A3 were the directors in the company accused at the relevant time, thus being directors they were in-charge of, and responsible to, the company accused for the conduct of its business. Even letter exhibited as Ex. CW1/E bears the signature of A2. Moreover, CW1 deposed that A2 to A5 were the directors of company accused and being directors, they were in-charge of, and responsible to, the company accused for the conduct of its business and during the trial accused persons failed to produce any contrary evidence. Considering all these, I am of the opinion that complainant has succeeded to establish that A2 and A3 were in-charge of, and responsible to, the company accused for the conduct of its business at the time of commission of alleged violations, thus they would be liable for the

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violations committed by the company accused in terms of Section 27 of the SEBI Act.

12. Now question arises as to whether company accused had violated any provision or regulation of the SEBI or not?

13. It is undisputed fact that company accused was incorporated on 02.01.1996. Company accused had sent a letter dated 15.01.1998 to the SEBI which is exhibited as Ex. CW1/E wherein company accused informed the SEBI that company accused had mobilized fund to the tune of ₹ 6,30,900/- under the different collective investment schemes floated by the company accused. CW1 in his examination-in-chief categorically deposed that company accused had launched various CIS and mobilized fund to the tune of ₹ 6,30,900/-. During his cross-examination, the deposition of CW1 to that extent remained unrebutted. Moreover, this fact is admitted by the company accused in its letter exhibited as Ex. CW1/E. In the absence of any contrary evidence on record, it is established that company accused had mobilized ₹ 6,30,900/- through various Collective Investment Schemes.

14. Section 12(1B) was inserted in the Act in the year 1995. By virtue of Section 12(1B) of SEBI Act, no person could sponsor or

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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. Admittedly, when various CIS were launched by the company accused in 1996-1997, company accused had not obtained any registration from the Board, thus company accused had violated the provisions of Section 12(1B) in the year 1996-1997 itself by mobilizing funds through CIS without obtaining certificate of registration from the SEBI.

15. Now the question may arise that the regulations were notified in October 1999 only and there was no regulation in the year 1996-1997 when company accused had mobilized the 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 were no Regulations upto 1999 and, hence, certificate could not be granted under Section 12(1B). However, the proviso to*

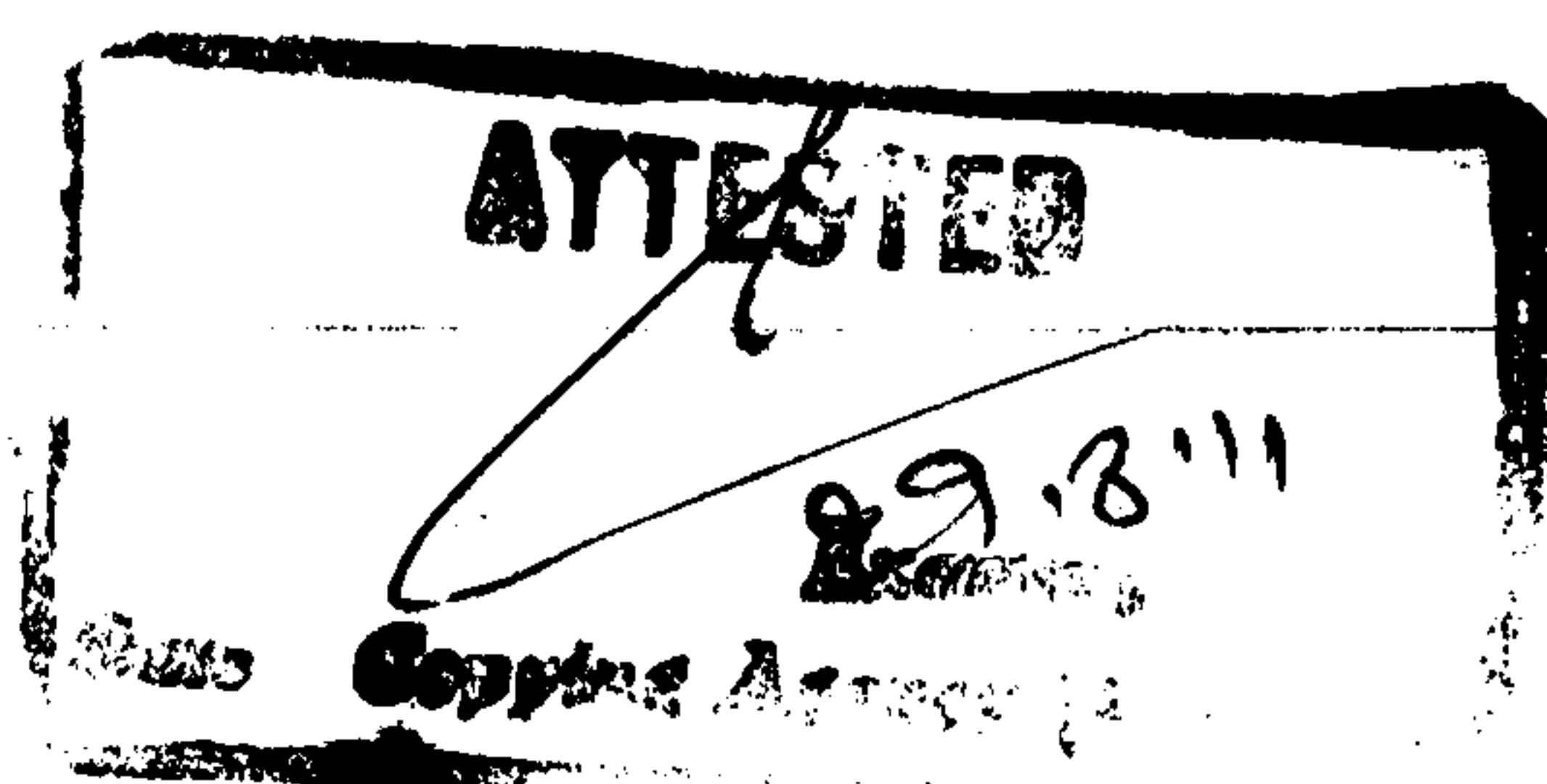
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**SEBI Vs. M/S Gujarat Forestry India Ltd. Company**

*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*

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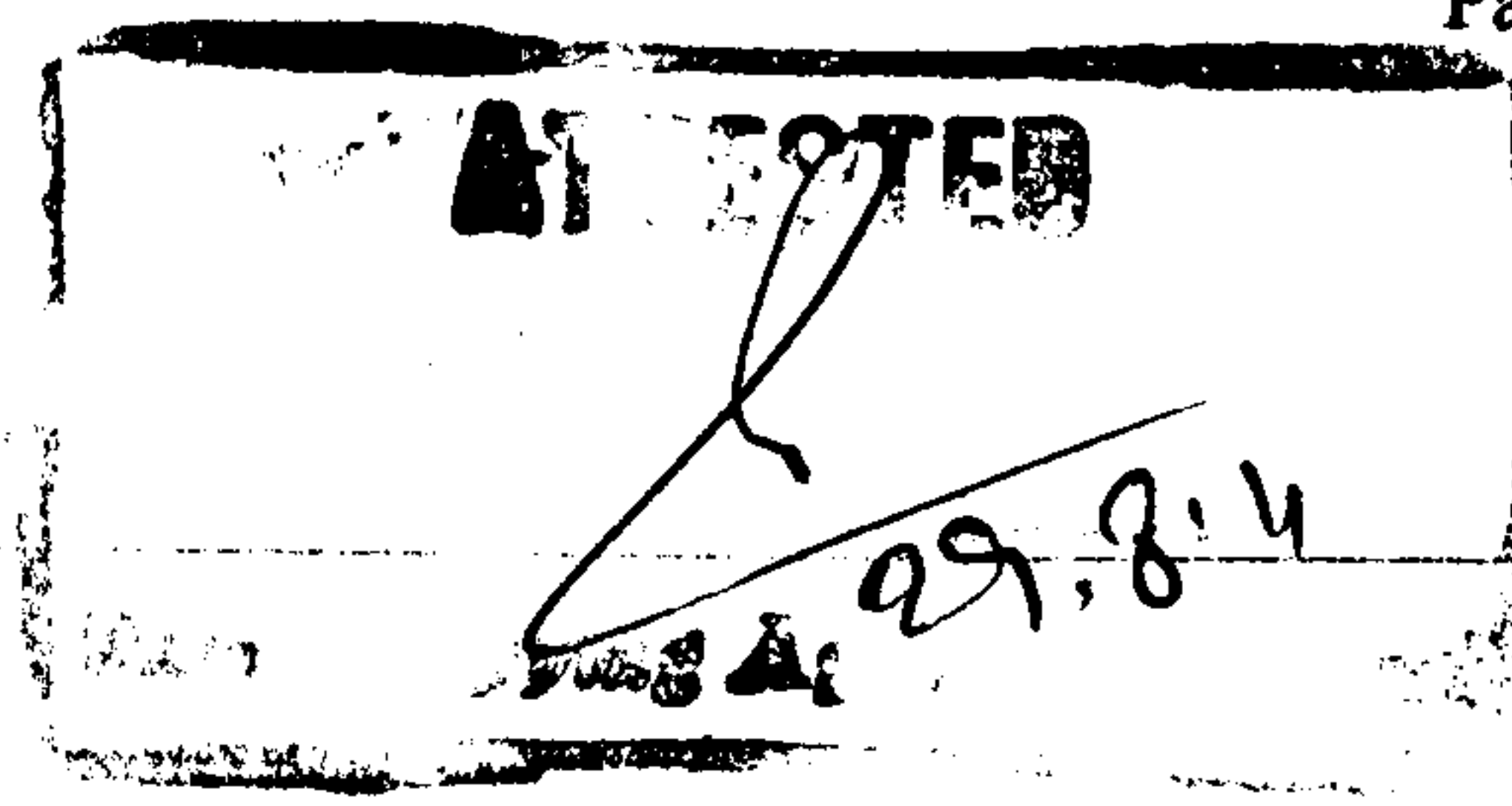


*Section 24 read with section 27 of the SEBI Act".*

16. From the above judgment, it becomes clear that merely there was no regulation in the year 1996-1997 was not an excuse for the company accused for not obtaining registration of a certificate. Since company accused had not obtained any certificate of registration in the year 1996-1997 when it mobilized funds through various CIS, company accused had violated the provisions of Section 12 (1B) of the SEBI Act.

17. 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 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 investor and the manner in which amount was 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

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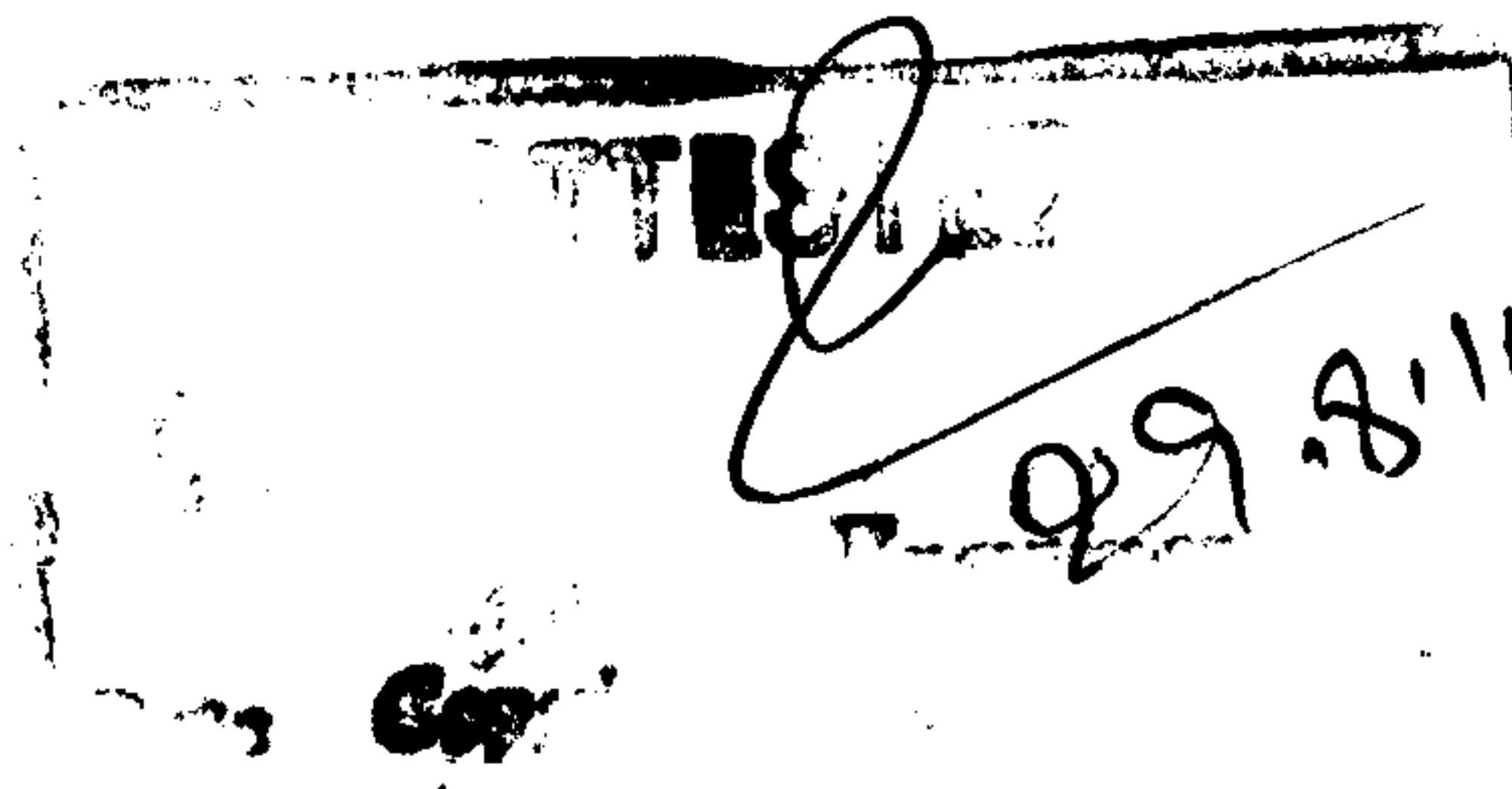
complied with the provisions of Regulation 73 of the CIS Regulations, thus company accused had not only violated Regulation 5 but also violated Regulation 73 of the CIS which amounts violation of Section 24(1) of the Act.

18. From the on going discussion, it becomes clear that company accused had violated Section 12 (1B) of the SEBI Act as well as regulations 5 & 73 of the CIS Regulation. Thus, company accused is guilty for the offence punishable under Section 24 (1) of the SEBI Act.

19. Considering the above discussion, I am of the opinion that A2 and A3 were in-charge of, and responsible to, the company accused for the conduct of its business being the directors of the company accused, thus, they are also liable for the violations committed by company accused by mobilizing funds in violation of provisions of SEBI Act.

20. Mulling over the afore-going discussion, I am of the considered opinion that complainant has succeeded to prove that company accused (A1) had mobilized the funds 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. Complainant has also succeeded

  
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to prove 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 in terms of Section 27 of the Act, A2 Arun Kumar Srivastav and A3 Raj Karan Batham are also liable for the above violations. Accordingly, I hereby hold them i.e. A1 M/s Gujarat Forestry (I) Ltd., A2 Arun Kumar Srivastav, A3 Raj Karan Batham guilty for the offence punishable under Section 24 (1) read with section 27 of the SEBI Act.

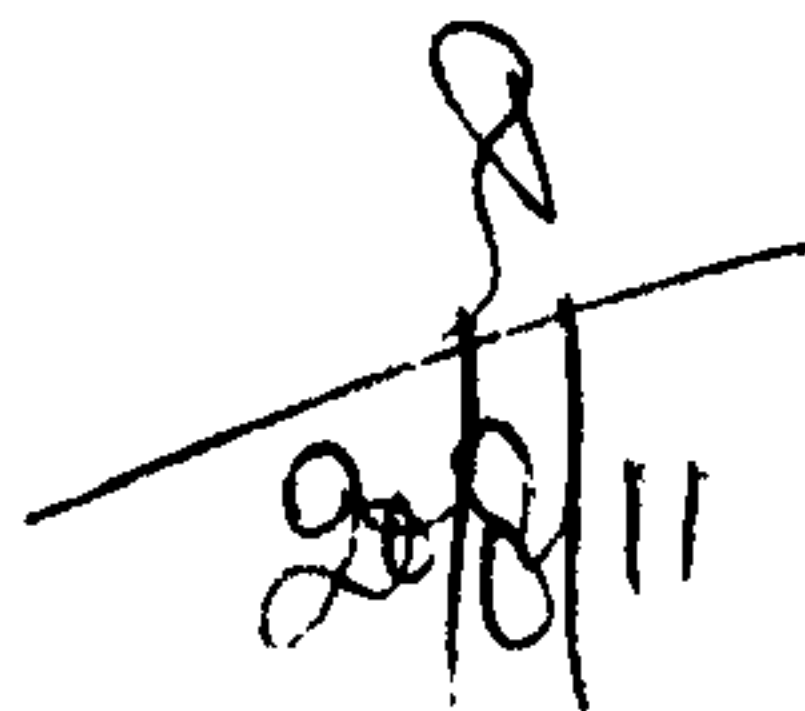
21. Since complainant has failed to establish that A6 to A8 were in-charge of, and responsible to, the company accused at the time of commission of offence, thus, I hereby acquit A6 Rakesh Kuamr Singh, A7 Amarjit Kumar Sharma and A8 Smt. Amina Khatun from all the charges. A8 is acquitted in her absentia (since A8 was proclaimed offender).

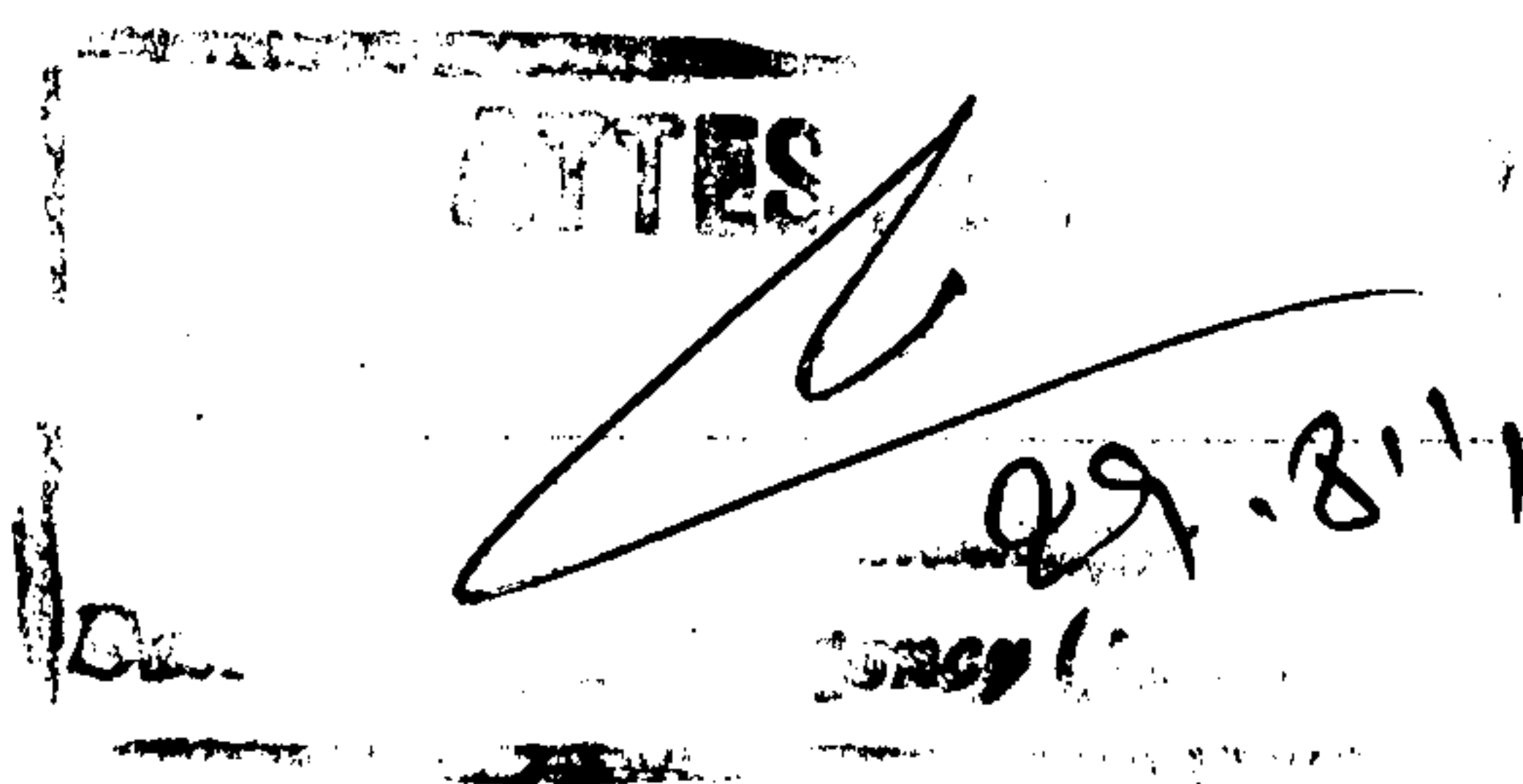
Announced in the open Court  
on this 19<sup>th</sup> day of August, 2011.

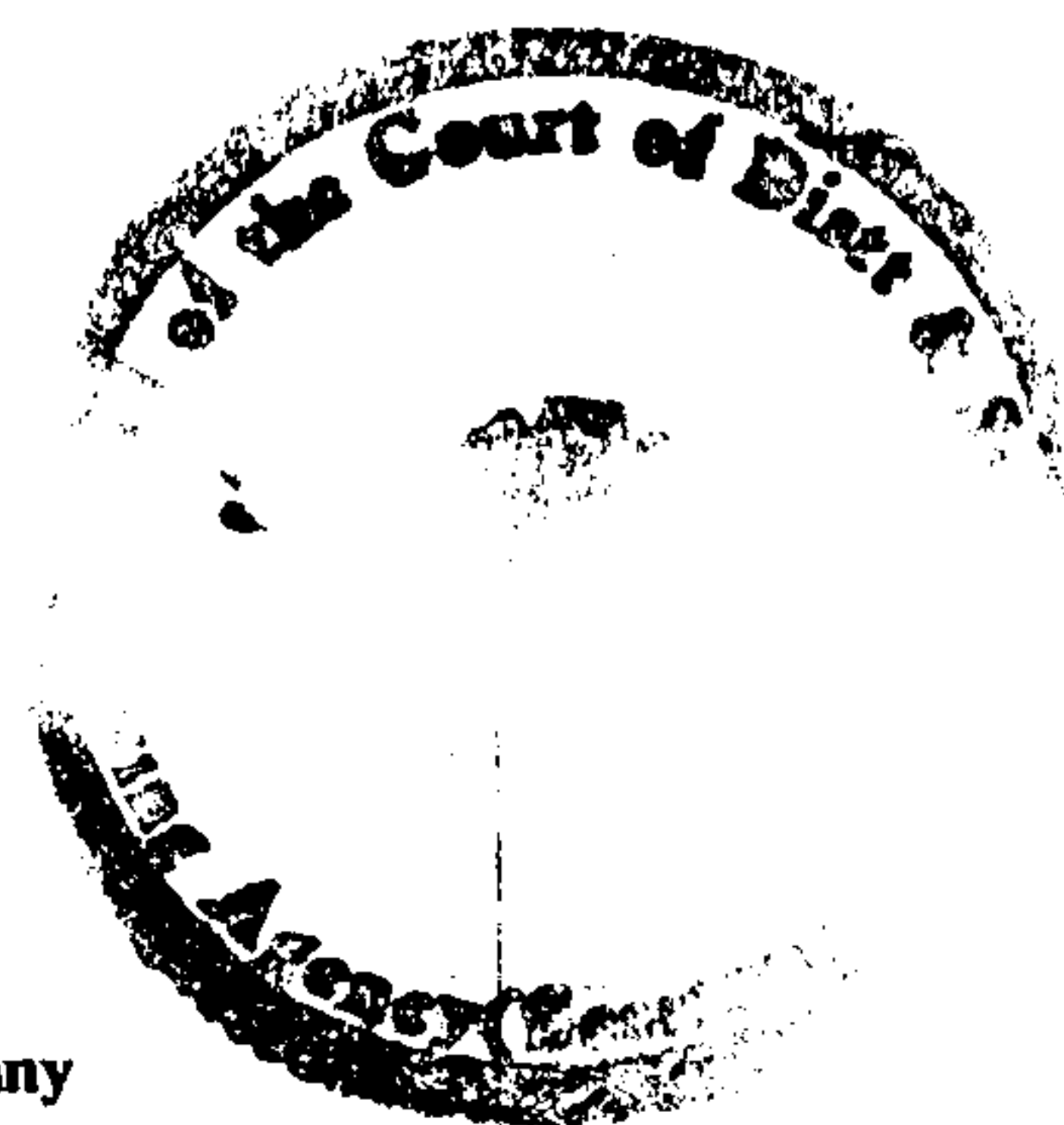
  
(PAWAN KUMAR JAIN)

ADDITIONAL SESSIONS JUDGE-01  
CENTRAL/THC/DELHI

Copy given to the Convicts  
in open Court at 12.00.

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

**Complaint Case No. 45/10  
ID No: 02401R0304962003**

**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 Mr. Manish Vashist, AGM, SEBI.

**.....Complainant**

**Versus**

1. **M/S Gujarat Forestry India Ltd. Company** incorporated under the Companies Act, 1956, having its Regd. Office at 85-B, Kharaya Pokhara, Medical Road, Gorakhpur.

**.....Convict no.1**

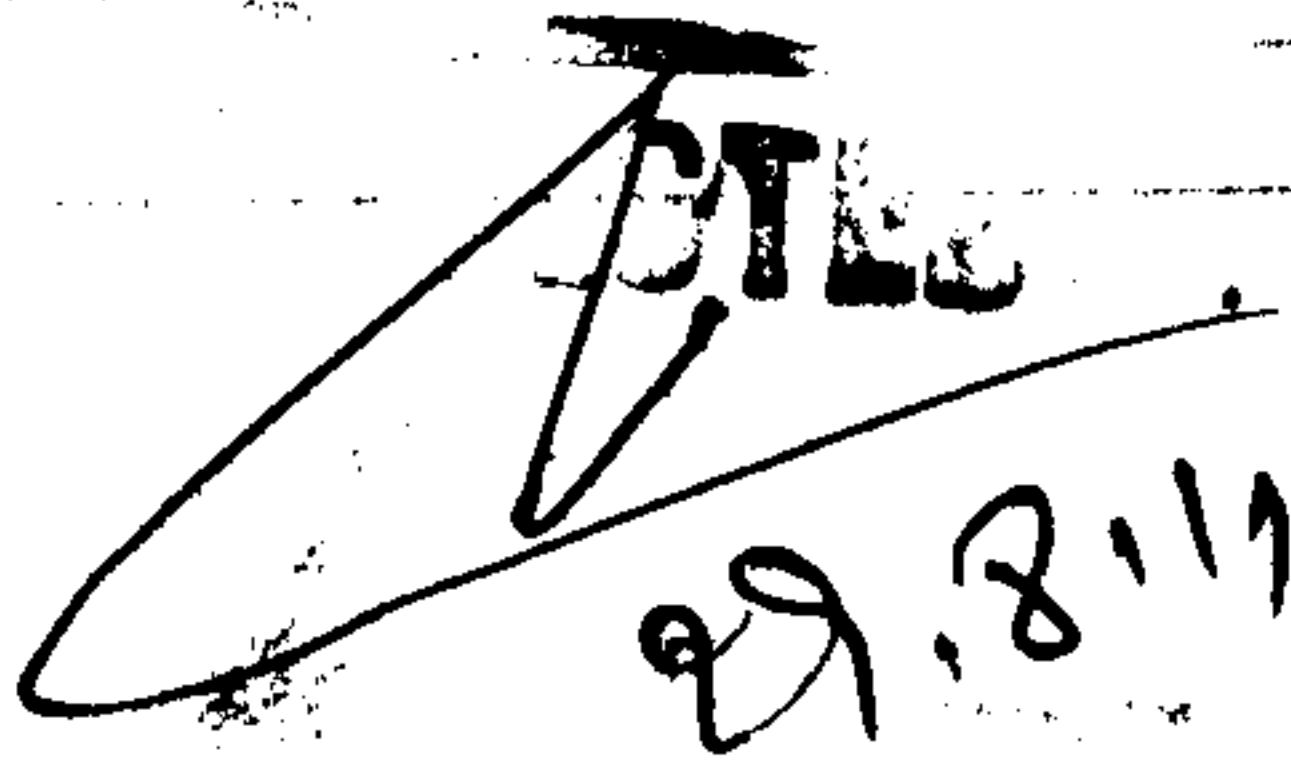
2. **Sh. Arun Kumar Srivastav** s/o Sh. Kedarlal Srivastav, Director of accused No.1, R/o: Vill. Bhagwanpur, P.O. Pipi Ganj, Gorakhpur.

**.....Convict no.2**

3. **Sh. Rajkaran Batham** s/o Sh. Fudai Lal, Director of Accused No.1, R/o H.No. 392, Rapti Nagar, Badarat Pur, Gorakhpur

**.....Convict no.3**

  
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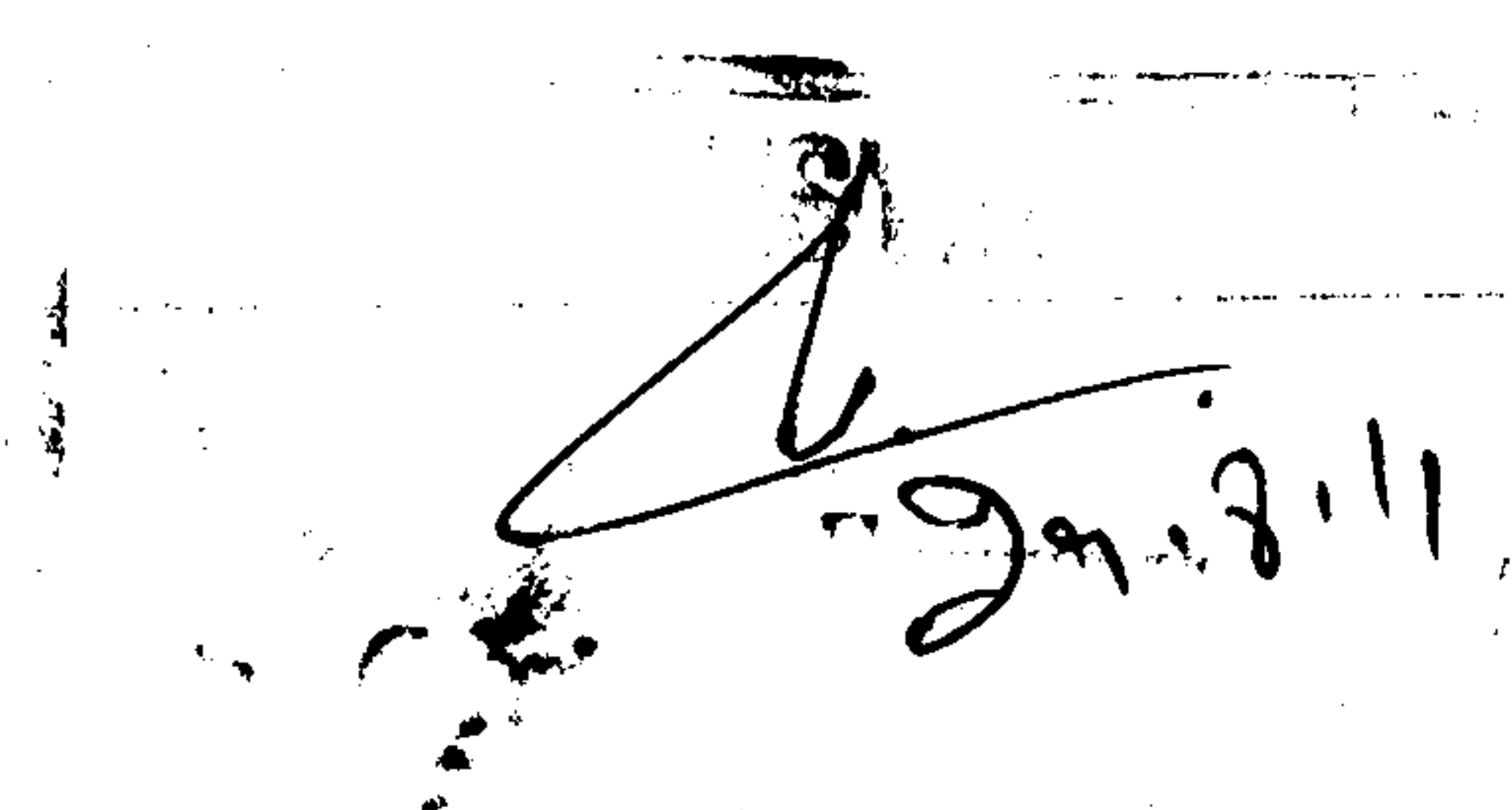
**Present:** Sh. Sanjay Mann, Advocate for the SEBI  
Sh. Manish Sharma, Advocate, Counsel for convicts

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

1. Vide separate judgment dated 19.08.2011, A1 i.e. Company accused, A2 & 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 the convicts requested for a lenient view on the ground that convict no. 2 & 3 are the sole bread earner of their respective family and there is no previous conviction against them. It is further stated that wife of convict no. 2 is suffering from cancer. On the other hand, counsel for the complainant requested for some substantial punishment.
3. I have heard Counsels for both parties, perused the record carefully and gave my thoughtful consideration to their submissions.
4. Admittedly, company accused (convict no.1) had mobilised fund to the tune of ₹ 6,30,900/- only from general public and no



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complaint of any of the investor is pending with SEBI. Considering the quantum of amount mobilized by the company accused (convict No.1) through CIS and submissions made by counsel for convicts, I am of the opinion that ends of justice will be met if substantial fine is imposed upon the convicts. Accordingly, I hereby impose a fine of ₹ 45,000/- each upon the convicts in default convict no. 2 & 3 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 paid.
6. Copy of judgment alongwith order on the point of sentence be given to the convicts free of cost.
7. File be consigned to record room.

Announced in the open Court  
on this 19<sup>th</sup> day of August, 2011.

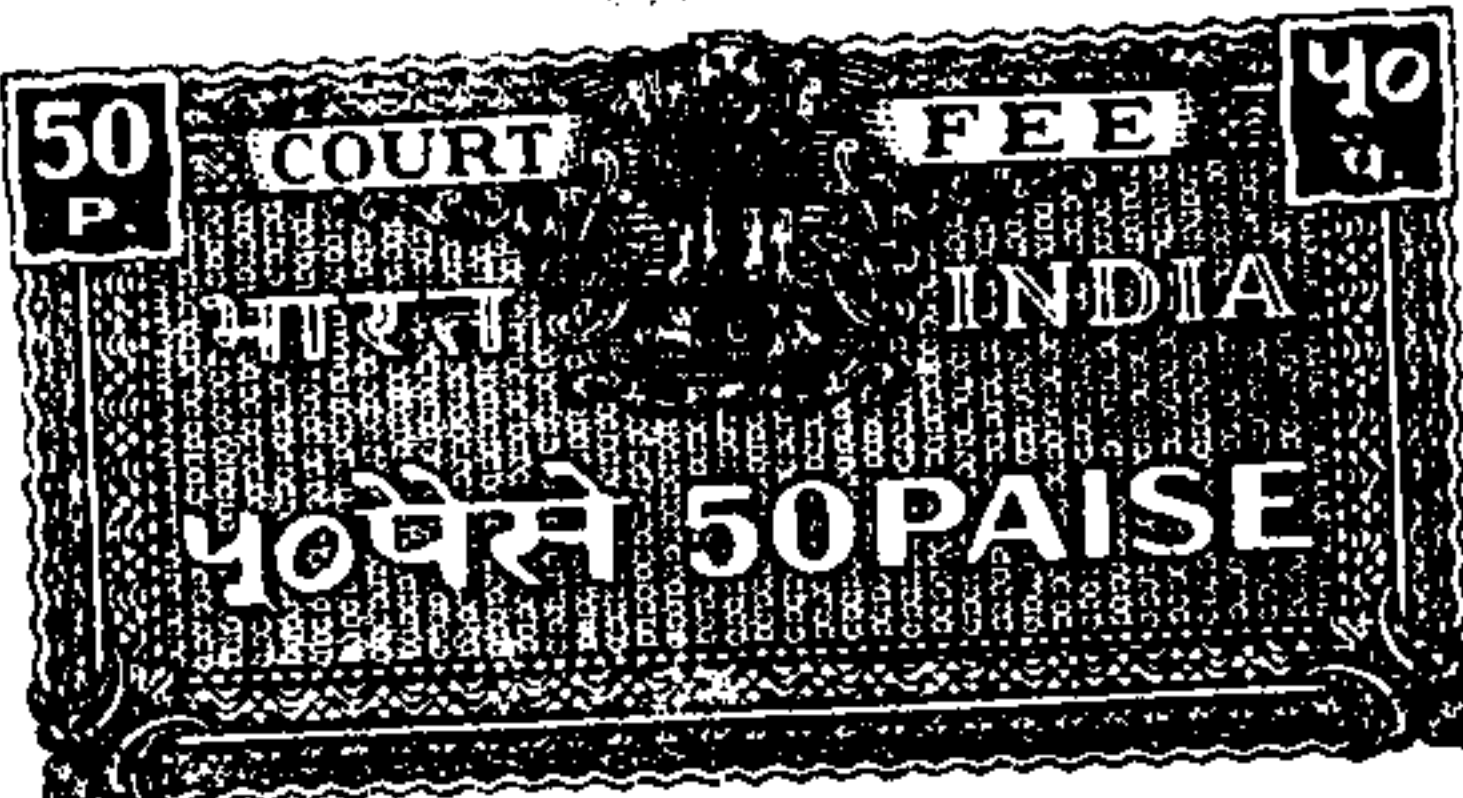
  
(PAWAN KUMAR JAIN)  
ADDITIONAL SESSIONS JUDGE-01  
CENTRAL/THC/DELHI

Copy given to the convicts  
in open court at free

20/8/11

Office of the Additional Sessions Judge
Certified to be a True Copy
Date: 20/8/11
Signature: [Signature]
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IN THE COURT OF CHIEF METROPOLITAN MAGISTRATE, TIS  
HAZARI COURTS, DELHI.

CC NO: ~~123~~ 2003

123/45112/03

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.

...COMPLAINANT

VERSUS

1. M/s Gujarat Forestry India Ltd.,  
Registered Office at  
85-B, Kharaya Pokhara,  
Medical Road,  
Gorakhpur.

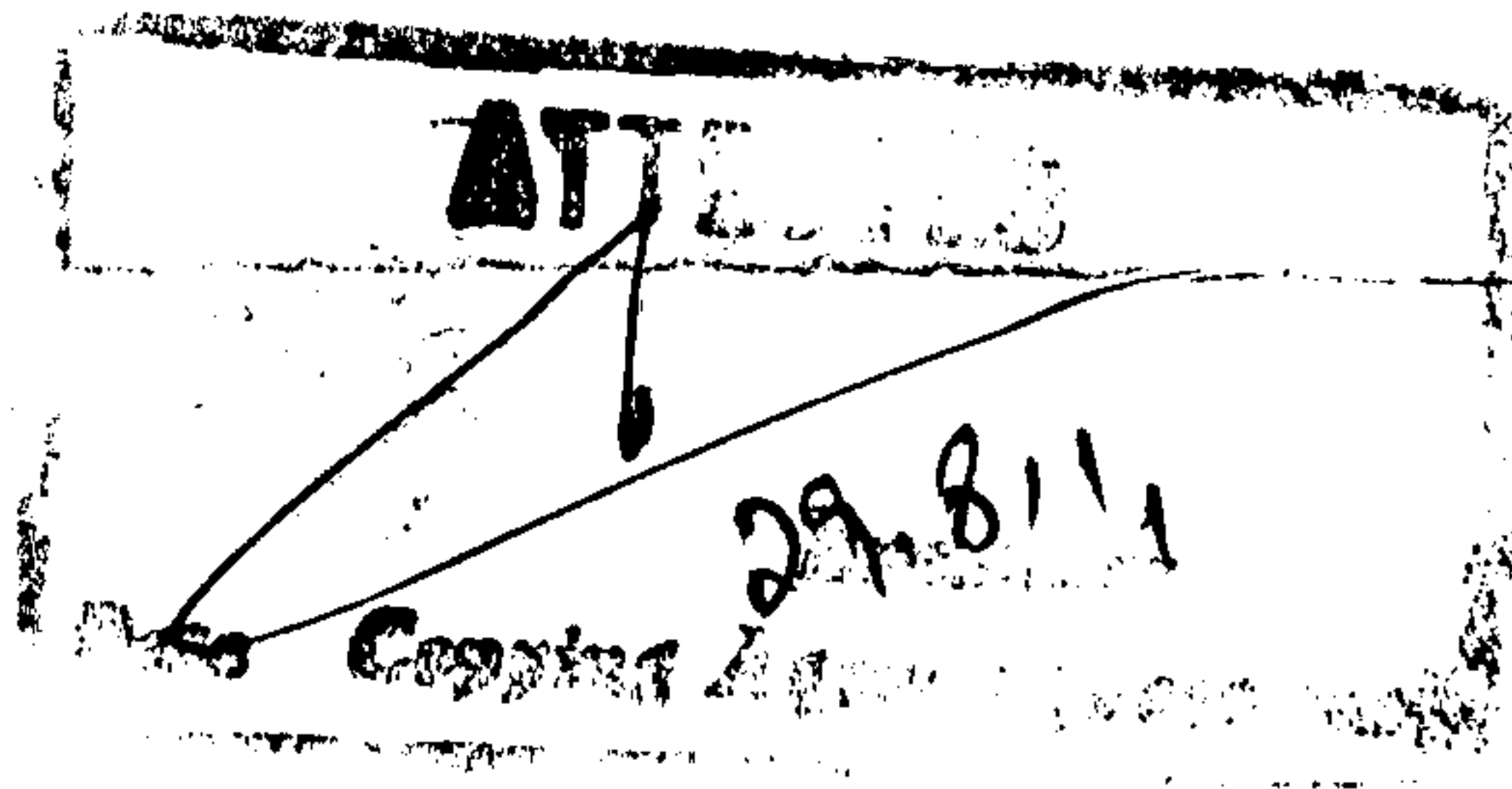
2. Sh. Arun Kumar Srivastav,  
(Director)/Promoter..  
S/o Sh. Kedarlal Srivastav,  
Vill. Bhagwanpur -PO Pipi Ganj,  
Gorakhpur.

3. Sh. Rajkaran Batham,  
(Director)/Promoter.  
S/o Late Sh. Fudai Lal,  
Vill. Dhamaraja- PO Khalilabad,  
Sant Kabir Nagar, U.P.  
Also at:  
Vill. Dhanaraja- PO Umrikalan,  
Distt. Basti.

4. Sh. Umesh Chander Srivastav,  
(Director)/Promoter.  
S/o Lalji Lal Srivastav,  
Vill. & PO Chapara,  
Sant Kabir Nagar, U.P.

5. Sh. Vinay Kumar Jha,  
(Director)/Promoter.  
S/o Shri Panchanand Jha,  
PO Manbelakhas, FCI Colony,  
Gorakhpur.  
Also at:  
VPO Dhadhia,  
Distt. Dharbanga, Bihar

.....ACCUSED





44 Name \_\_\_\_\_  
45 Date \_\_\_\_\_

**FLORISSANT**

## Abstract

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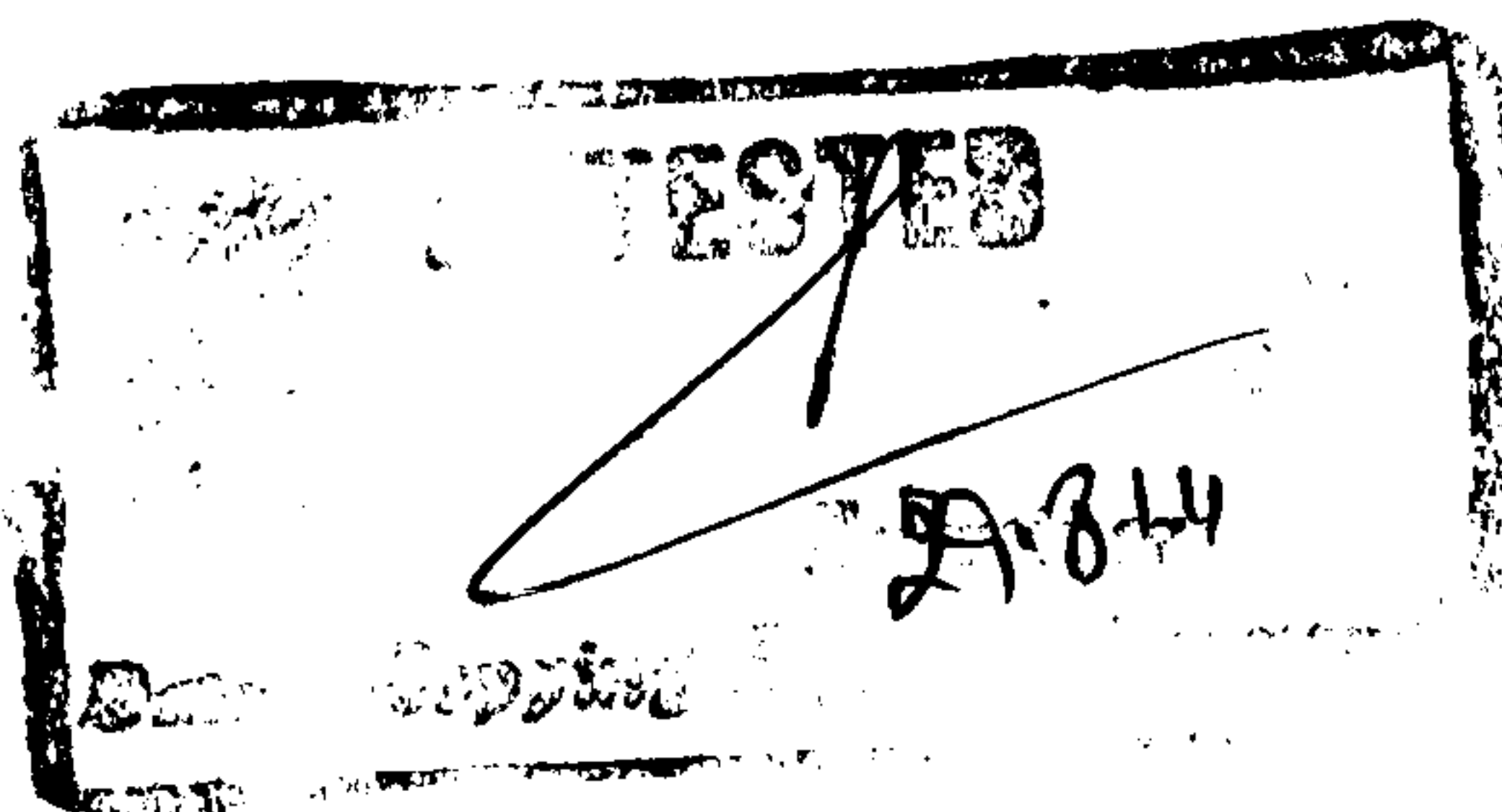
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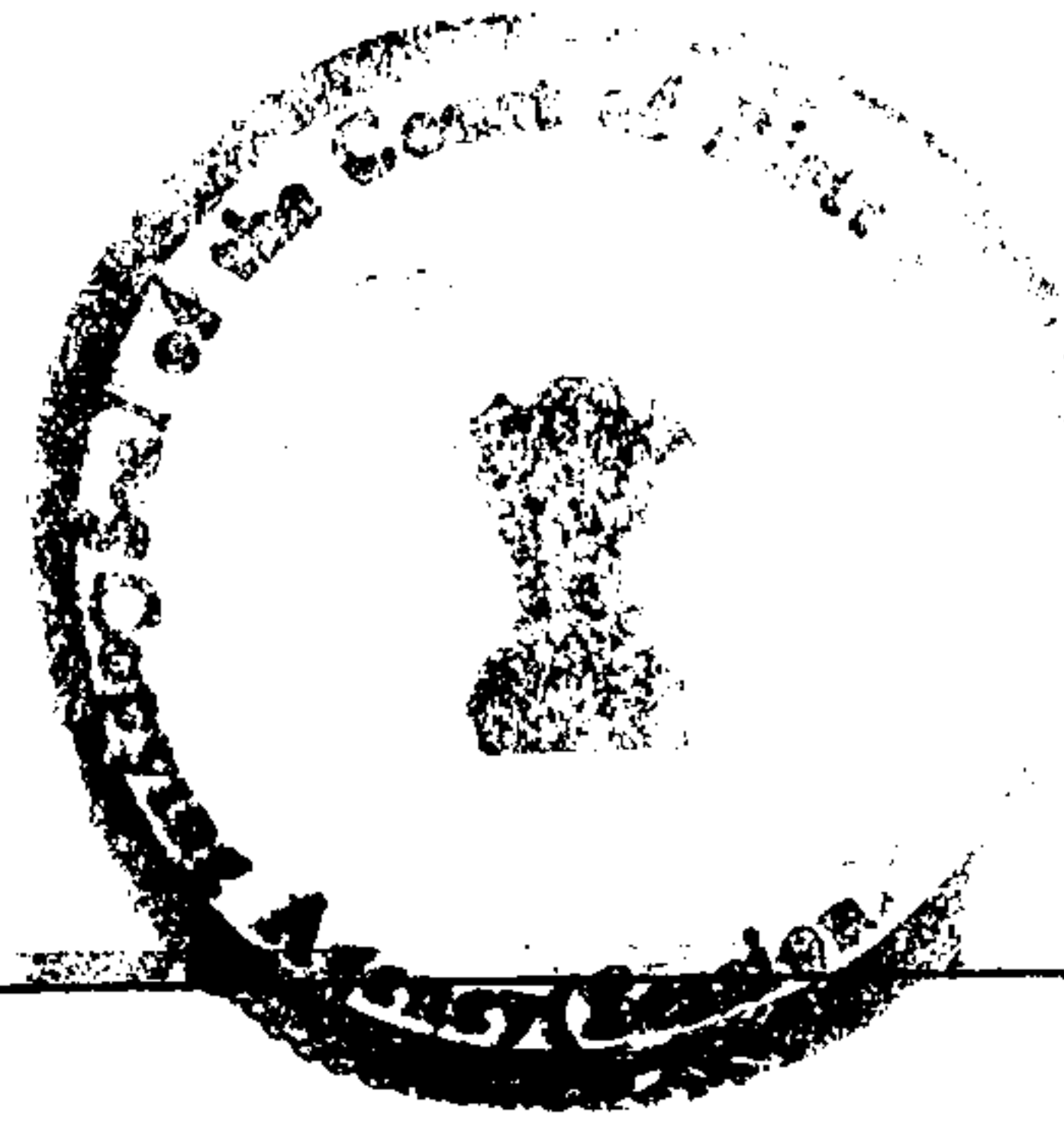




6. Sh. Rakesh Kumar Singh,  
(Director/Promoter)  
Vill. Pipra Devraj,  
P.O. Bhatni,  
Distt. Deoria.
7. Sh. Amarjit Kumar Sharma,  
(Director/Promoter)  
Ganga Nagar, Basharatpur,  
PO Arogyamandir,  
Distt. Gorakhpur.
8. Smt. Amina Khatun, (Director/Promoter)  
Vill. Pakarikhud,  
Distt. Padrauna.

**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**





CC No. 45/10

**Item no. 11**

**19.8.2011**

**Present:** Sh. Sanjay Mann, Advocate for the SEBI  
Sh. Manish Sharma, Advocate, Counsel for accused  
no.1, 2, 3, 6 & 7  
Accused no. 4 & 8 have already been declared  
Proclaimed offenders and proceedings qua accused  
no.5 have already been abated.

Further arguments heard advanced by parties of both  
parties.

Vide separate judgement A1 i.e. company accused and  
A2 & A3 are 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 ₹  
45,000/- is imposed upon each convicts in default convict no. 2 & 3  
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.





Bail bond and surety bond of convict no.2 & 3 stands cancelled. Sureties discharged. Original documents if any be returned to the sureties.

Copy of judgement along with 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 the same be revived as and when accused no.4 be apprehended.

(Pawan Kumar Jain)  
Addl. Sessions Judge-01/  
Central/THC/Delhi  
19.8.2011

