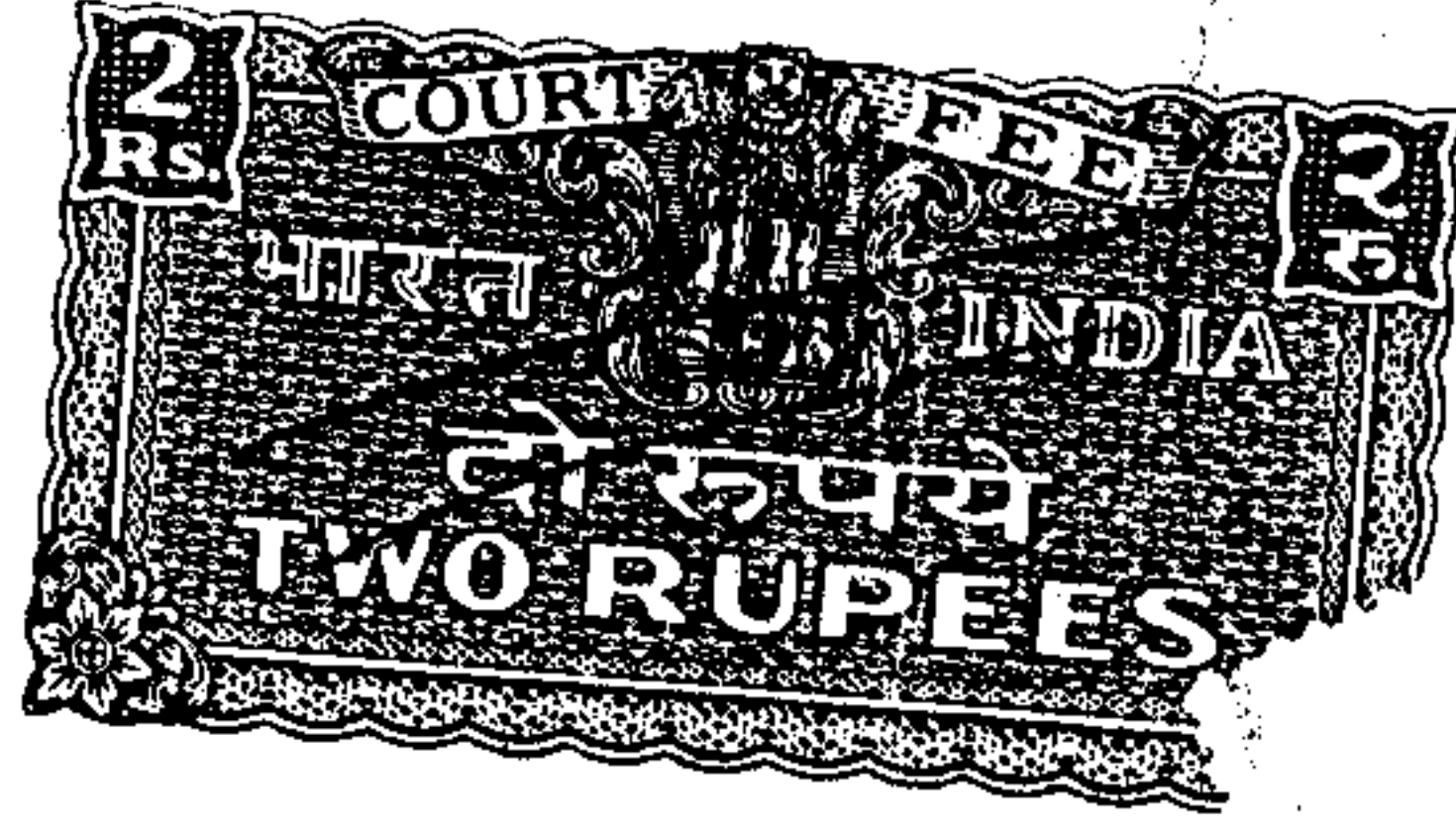


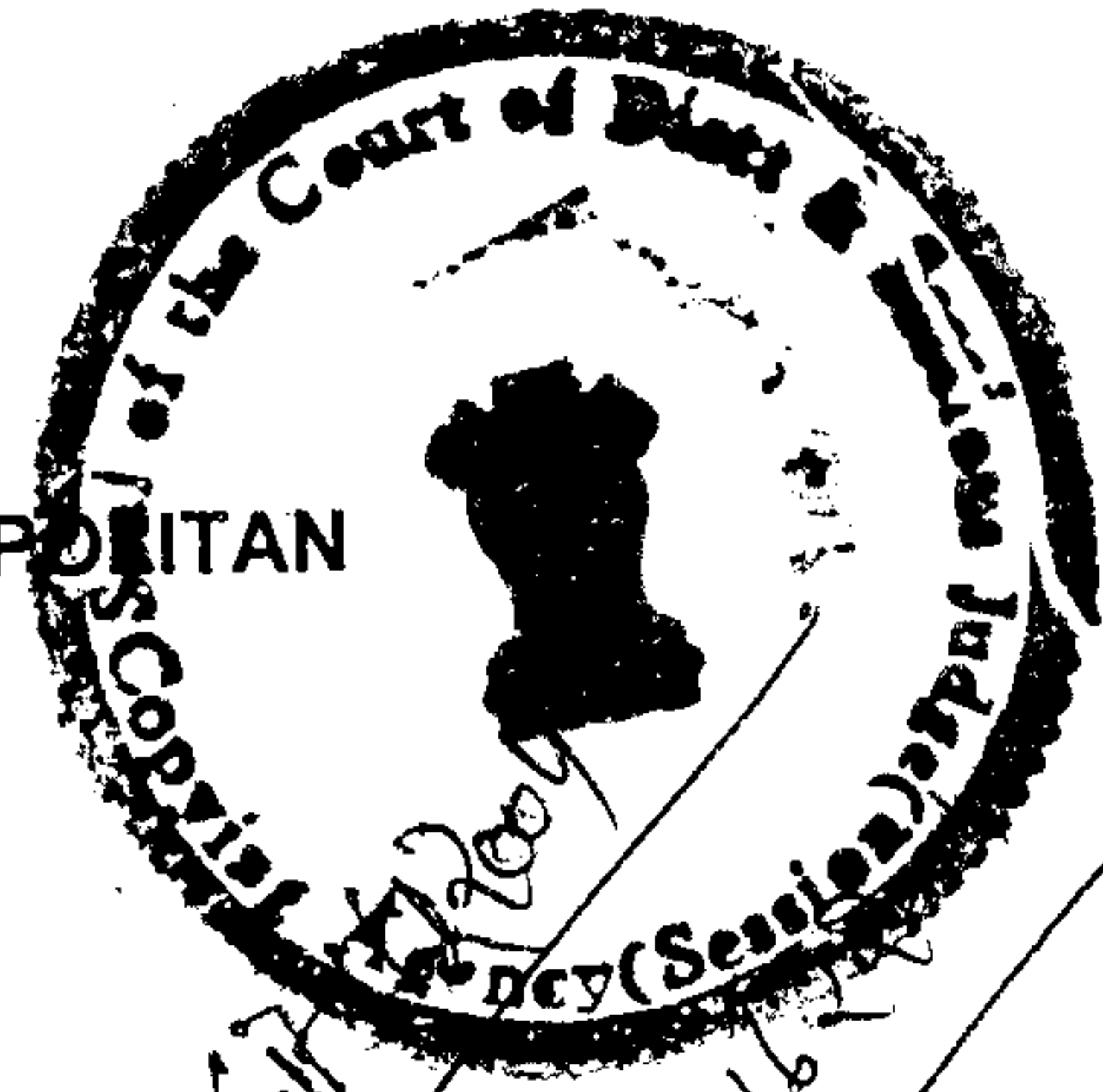
Sh. Pawan. Kr. Jain (A.S.J.)



IN THE COURT OF ADDITIONAL CHIEF METROPOLITAN

MAGISTRATE, DELHI

CC NO: 38 OF 2004
14/01/04

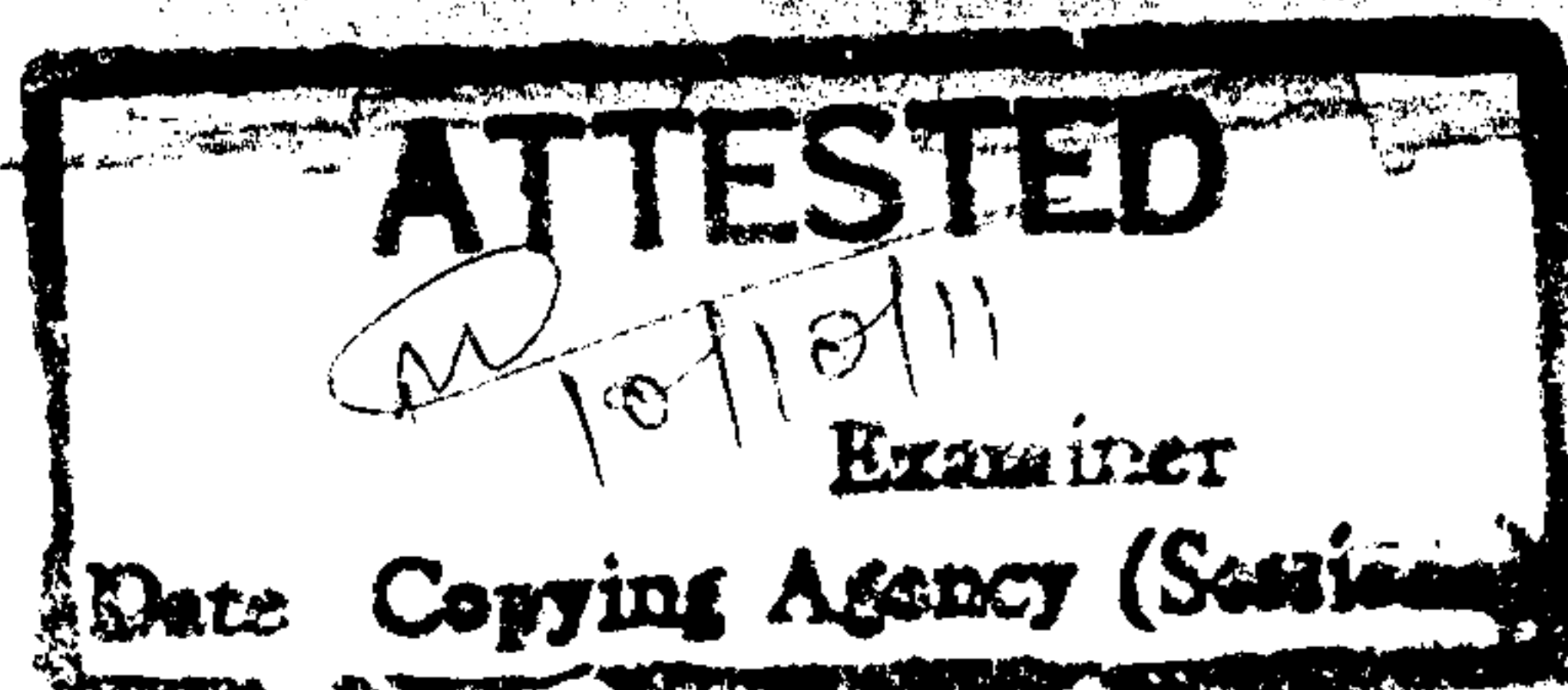


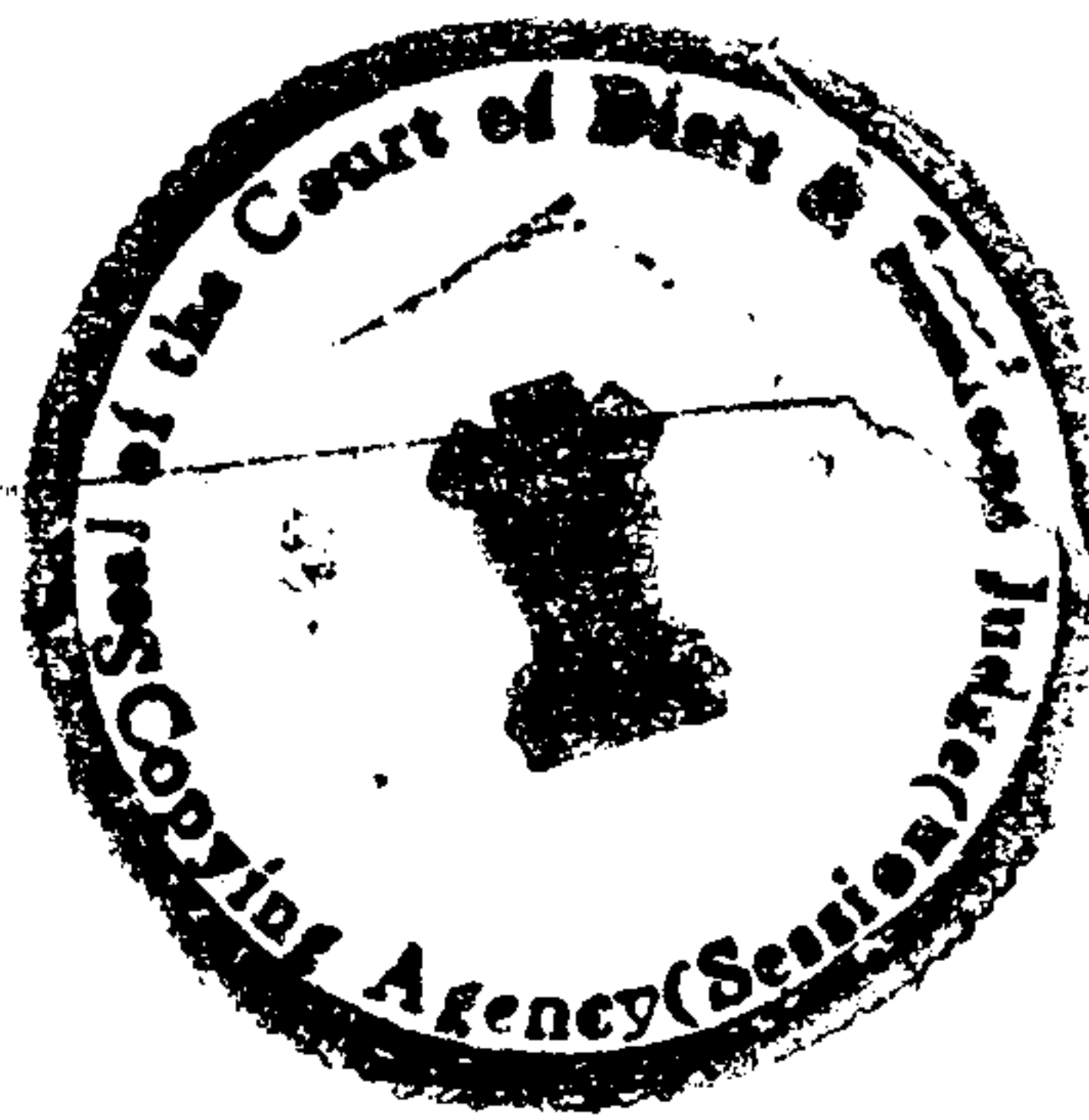
Securities and Exchange Board of India, a statutory body established under the provisions of Securities and Exchange Board of India Act, 1992, having its Head office at Mittal Court, B - Wing, 224 Nariman Point, Mumbai 400 021 represented by its Legal Officer, Shri Sharad Bansode.

...Complainant

VERSUS.

1. Kudrat Agro Tech Ltd. a Company incorporated Under the Companies Act, 1956, having its Regd. Office at : 13/392 A, Civil Lines, Kanpur-208001 and also having office at: 104 A/278, P. Road, Near Har Sahai Jagdamba Sahai College, Kanpur.
2. Shri Shyam Mohan Pandey S/o Late Shri L.D. Pandey, Director of Accused No.1, R/o:B-16, C.S.A. Campus Colony, Nawab Ganj, Kanpur, U.P.
3. Shri Manoj Saxena S/o Shri S.P. Saxena, Director of Accused No.1, R/o:B-24, C.S.A. Campus Colony, Nawab Ganj, Kanpur, U.P.





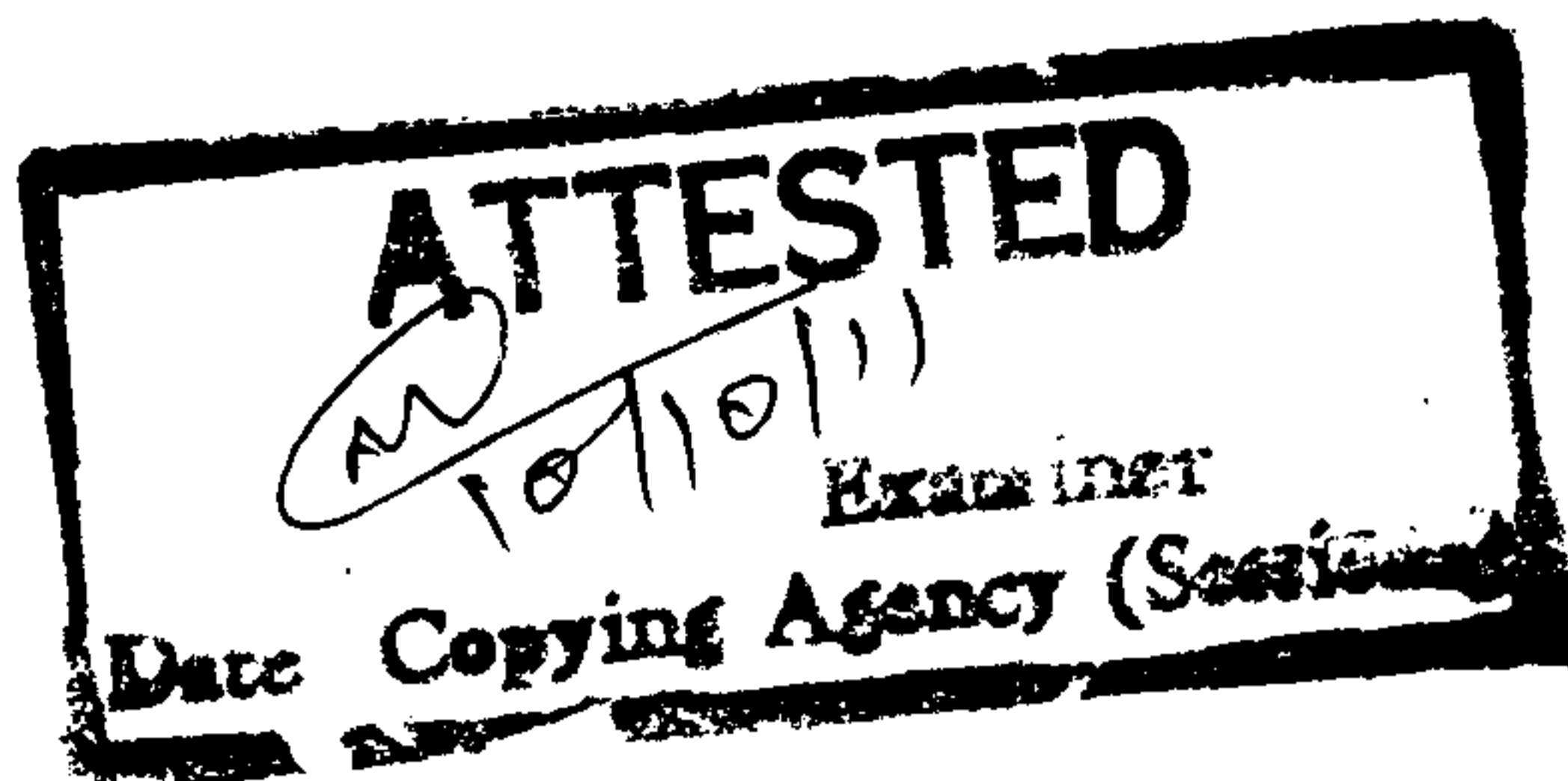
2

Shri R.S. Dixit S/o Shri L.R. Dixit,
Director of Accused No.1, R/o:464,
Nankari, IIT, Kanpur, U.P.

5. Shri Pawan Kumar S/o Shri Late S.N.Accused

80 /
Srivastava, Director of Accused No.1,
R/o: 1/220, J Nawab Ganj, Kanpur,
U.P.

**COMPLAINT UNDER SECTION 190 AND SECTION 200 OF THE CODE OF CRIMINAL
PROCEDURE, 1973 READ WITH SEC. 24(1), 27 OF SECURITIES AND EXCHANGE
BOARD OF INDIA ACT, 1992**



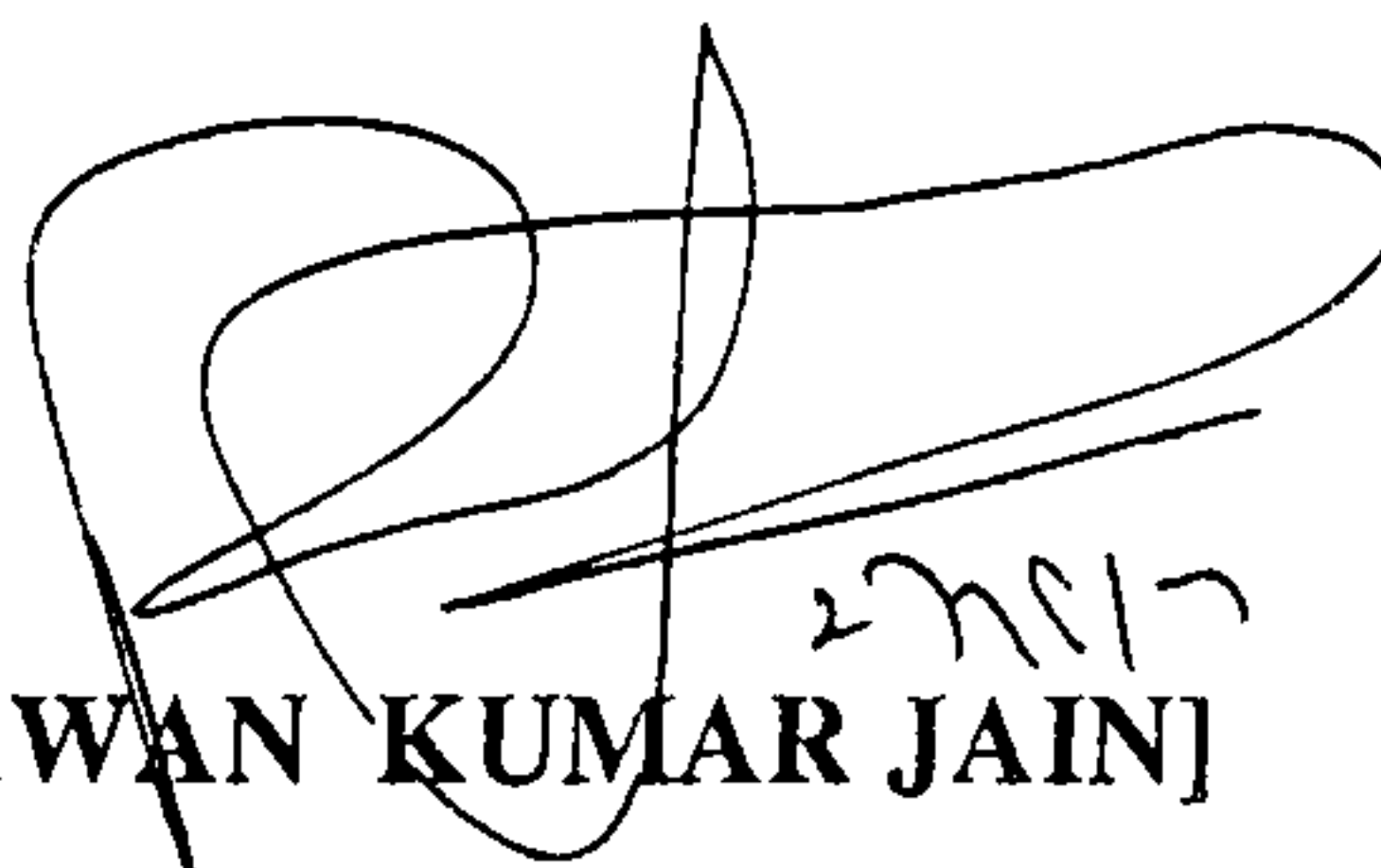


Item No. 07
CC No. 25/10
27.09.2011.

Present: Sh. Sanjay Mann, Advocate/counsel for the complainant.
Accused no.1 is company but represented by none.
Accused no. 2 and 5 are PO vide order dated 01.05.2009.
Accused no. 3 and 4 are on bail with counsel Sh. P.K. Malik, Advocate.

Vide separate judgment, accused no.1, 3 and 4 are held guilty for the offence under Section 24(1) read with Section 27 of the SEBI Act.

Renotify the matter for arguments on the point of sentence on 28.09.2011.


[PAWAN KUMAR JAIN]
ASJ-01/CENTRAL/DELHI
27.09.2011.





SEBI Vs. Kudrat Agro Tech Ltd. & ors.

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

**Complaint Case No. 25 of 2010
ID No: 02401R5171622004**

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.

Versus

1. **Kudrat Agro Tech Ltd.**,
a company incorporated under the Companies Act, 1956, having its Regd. Office at:
13/392 A, Civil Lines, Kanpur-208001 and
also having office at 104 A/278, P Road,
Near Har Sahai Jagdamba Sahai College,
Kanpur.

.....Accused no.1

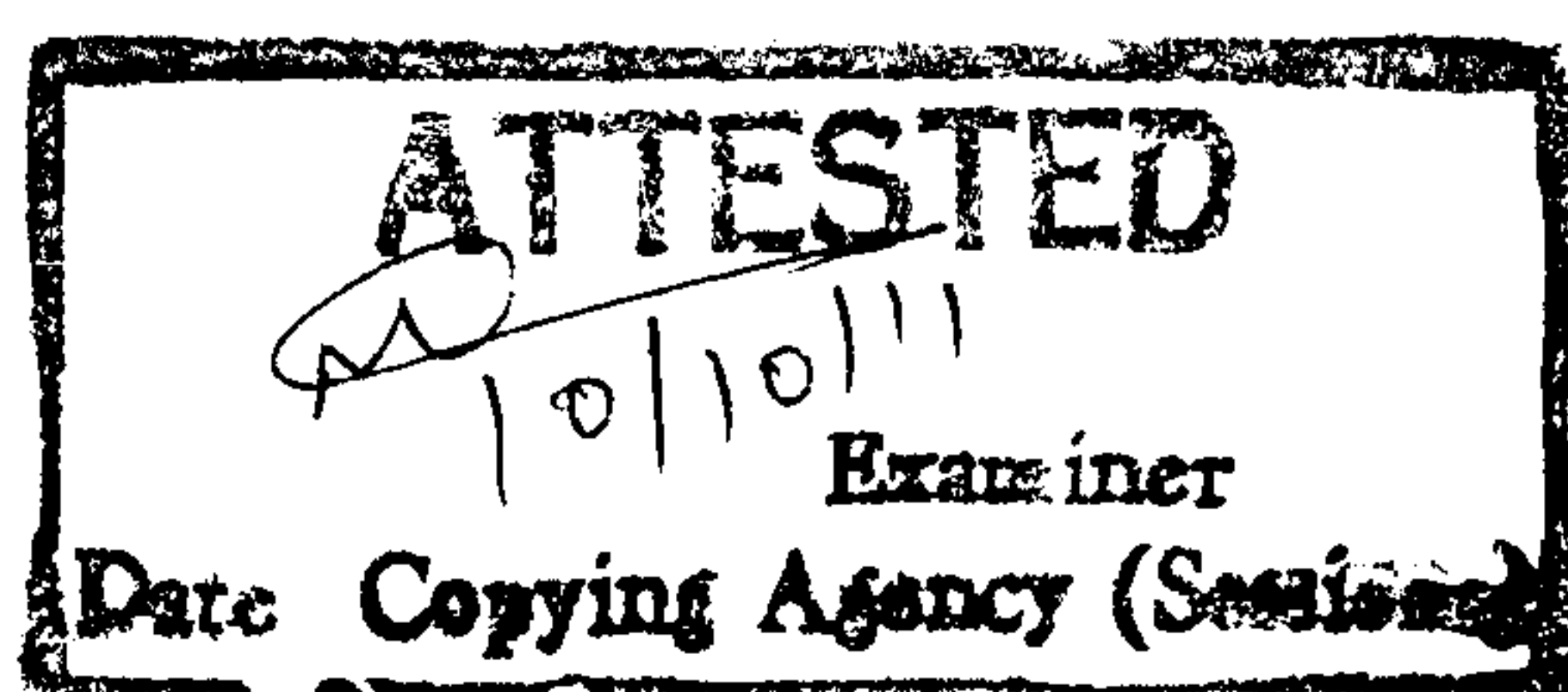
2. **Sh. Shyam Mohan Pandey**
S/o Late Sh. L. D. Pandey,
Director of Accused No.1,
R/o B-16, C.S. A Campus Colony, Nawab Ganj,
Kanpur, U. P.

.....Accused no.2


27/9/11

CC No. 25/10

Page no. 1 of 19





SEBI Vs. Kudrat Agro Tech Ltd. & ors.

3. **Sh. Manoj Saxena**
S/o S.P. Saxena,
Director of Accused No.1,
R/o B-24, C.S.A Campus Colony,
Nawab Ganj, Kanpur, U. P.

.....Accused no.3

4. **Sh. R.S. Dixit**
S/o Sh. L.R. Dixit,
Director of accused no. 1
R/o 464, Nankari, IIT, Kanpur, U. P.

.....Accused no.4

5. **Sh. Pawan Kumar**
S/o Late Sh. S. N. Srivastav,
Director of accused no. 1
R/o 1/220, J Nawab Ganj,
Kanpur, U. P.

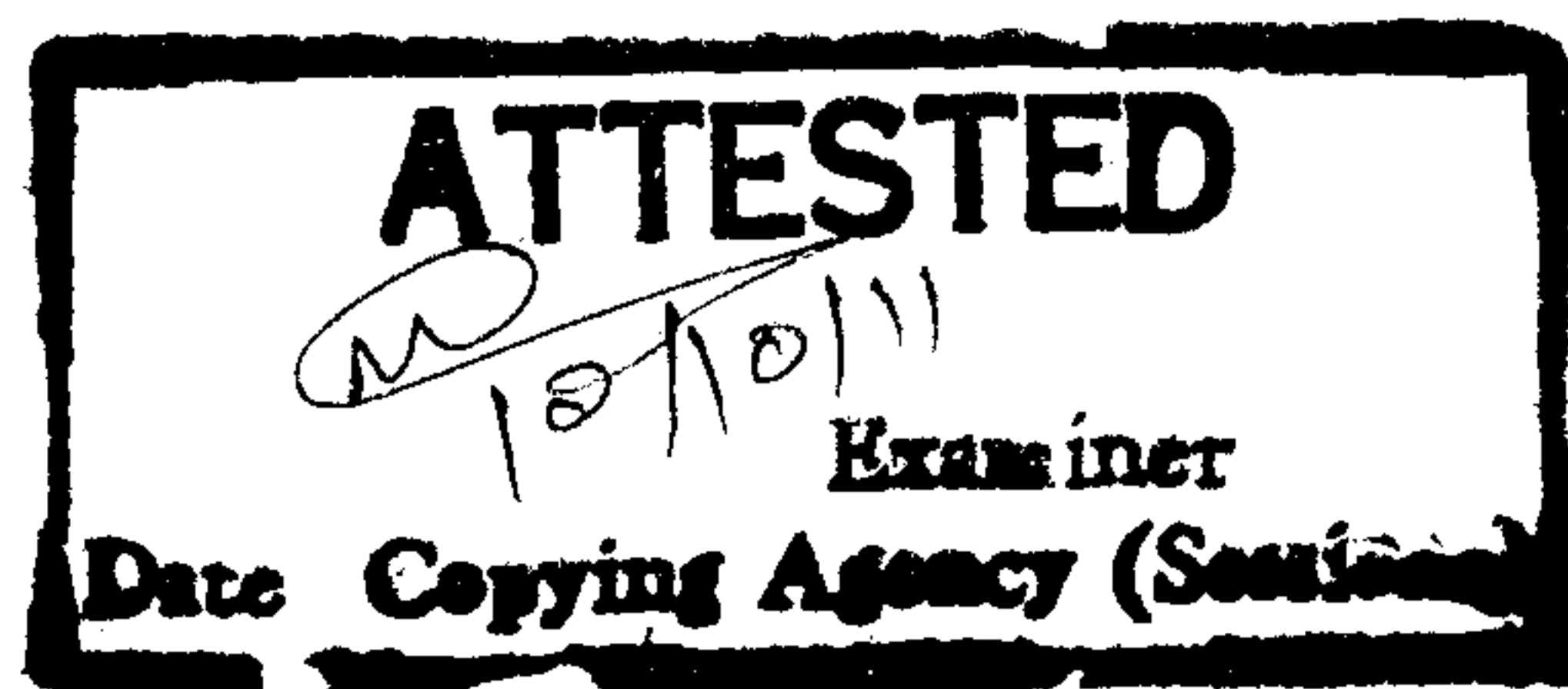
.....Accused no.5

Date of Institution	:	14.01.2004
Date of committal to Session Court	:	02.04.2005
Judgment reserved on	:	15.09.2011
Date of pronouncement of judgment	:	27.09.2011

Present: Sh. Sanjay Mann, Advocate, Counsel for SEBI
Sh. P.K.Malik, Advocate, Counsel for accused
No. 3 & 4

27/9/11

CC No. 25/10



Page no. 2 of 19

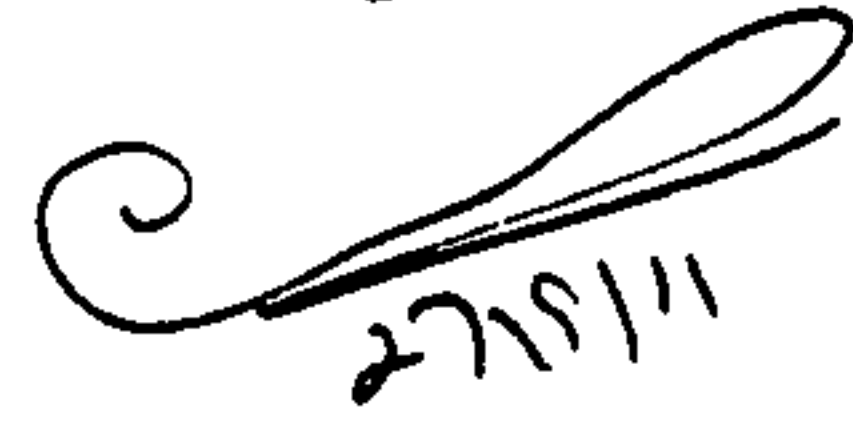


SEBI Vs. Kudrat Agro Tech Ltd. & ors.

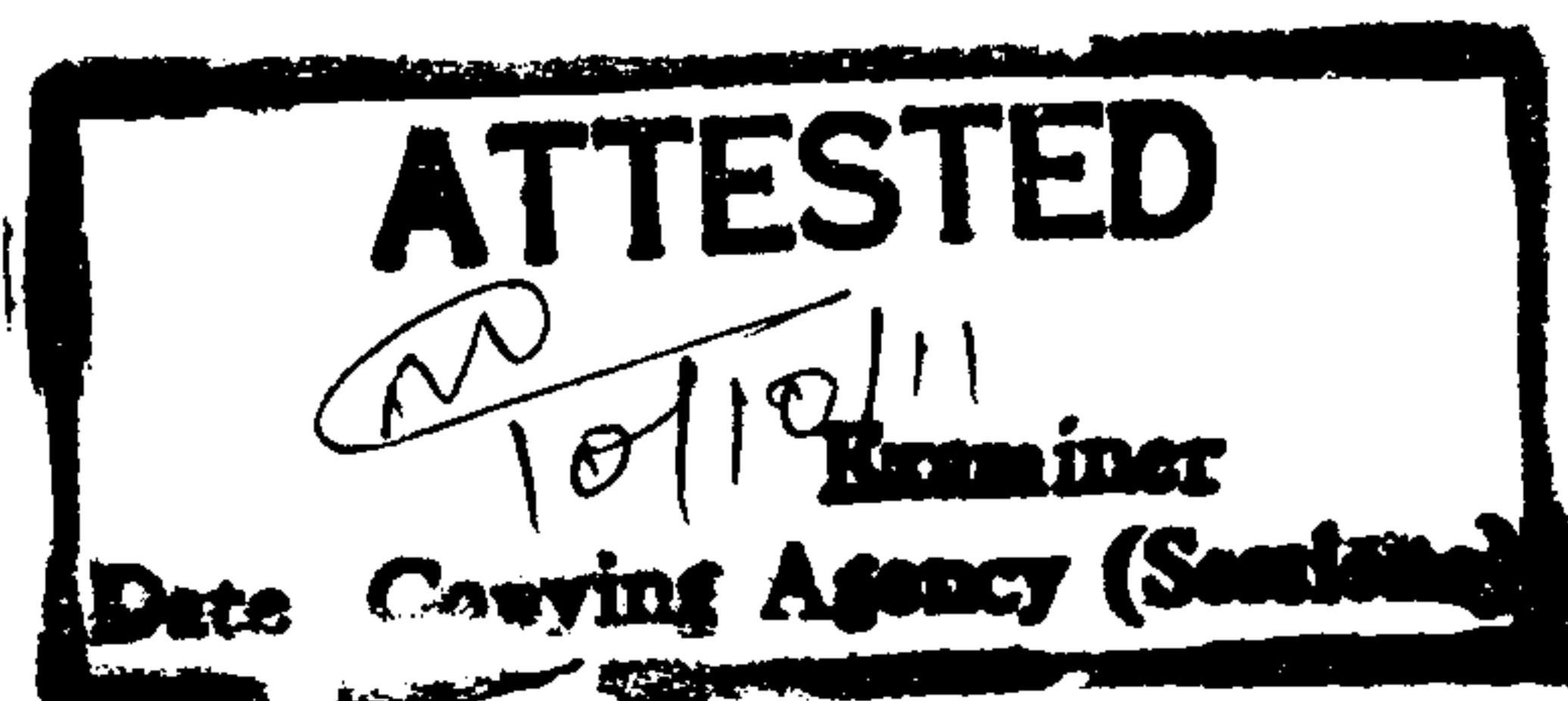
JUDGMENT:

1. This criminal complaint was preferred by the Securities & Exchange Board of India (hereinafter referred to as "SEBI" or "the complainant"), on January 14, 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 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.

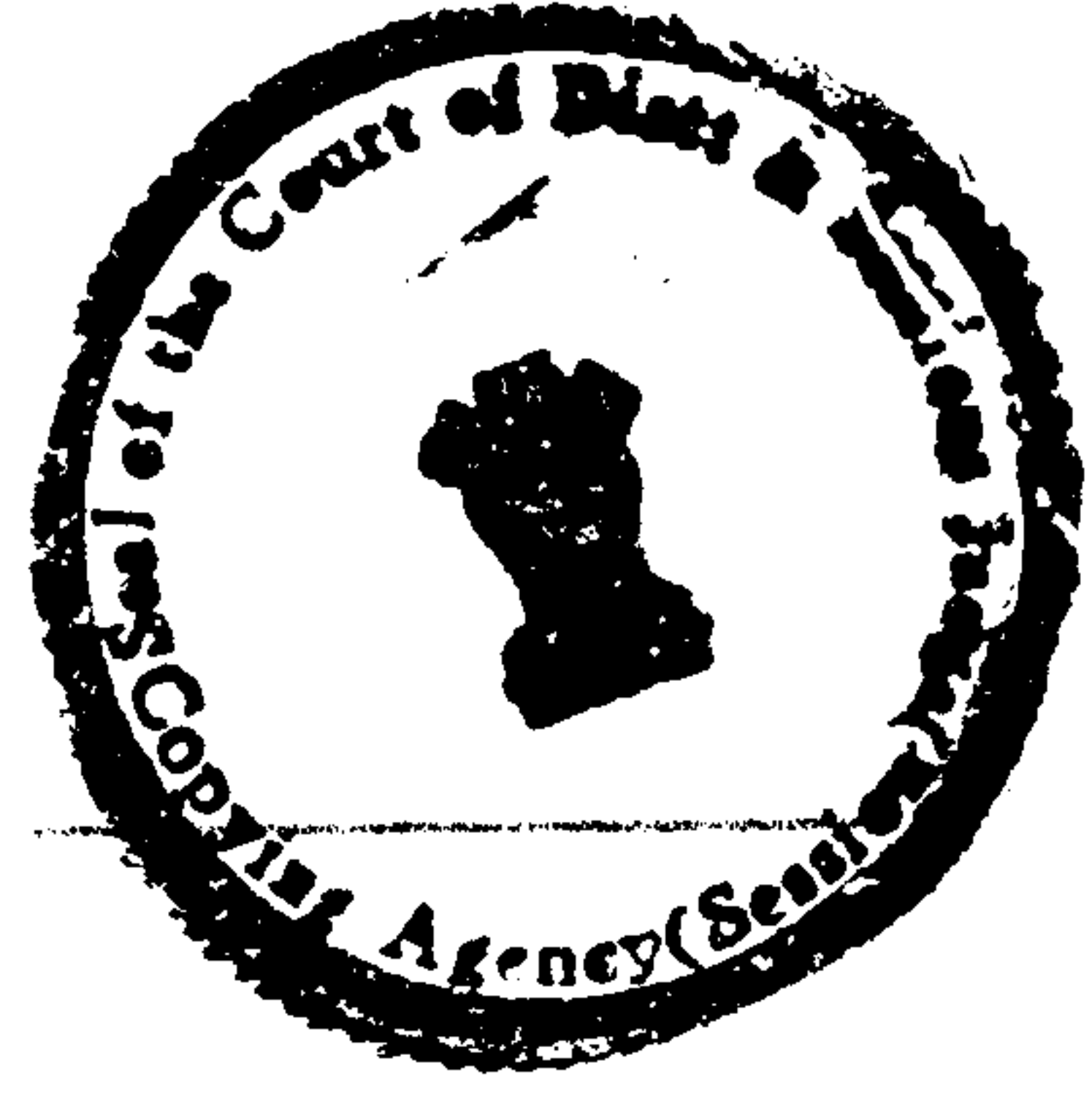
2. Five persons were arrayed as accused in the criminal complaint preferred under Section 200 Cr.P.C., they being Kudrat Agro Tech Ltd., ("A1"), accused No. 2 Sh. Shyam Mohan Pandey ("A2"), accused No. 3 Sh. Manoj Saxena ("A3"), accused No. 4 Sh. R. S. Dixit ("A4"), accused No. 5 Pawan Kumar ("A5"). It is alleged that A2 to A5 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


27/5/11

CC No. 25/10



Page no. 3 of 19

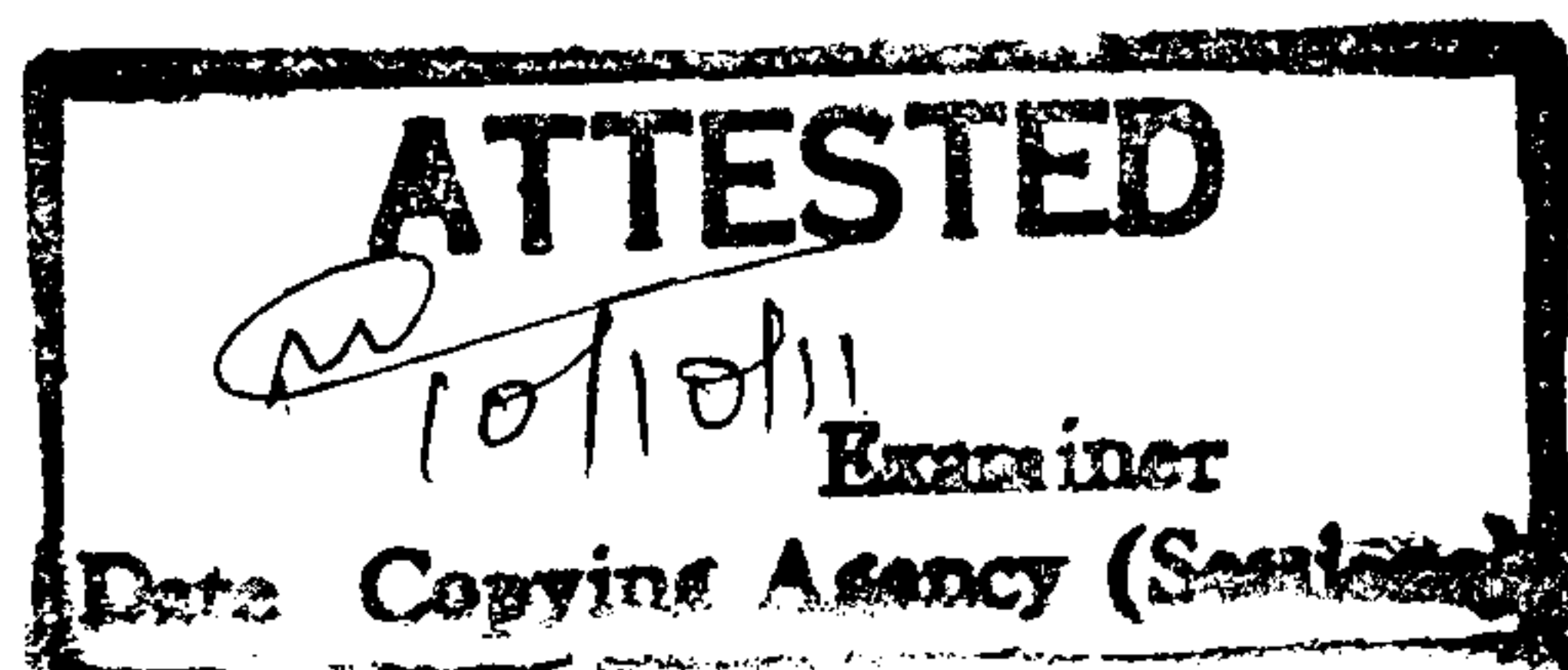


SEBI Vs. Kudrat Agro Tech Ltd. & ors.

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 approximately ₹ 14.80 lac 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 January 14, 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

CC No. 25/10



Page no. 4 of 19

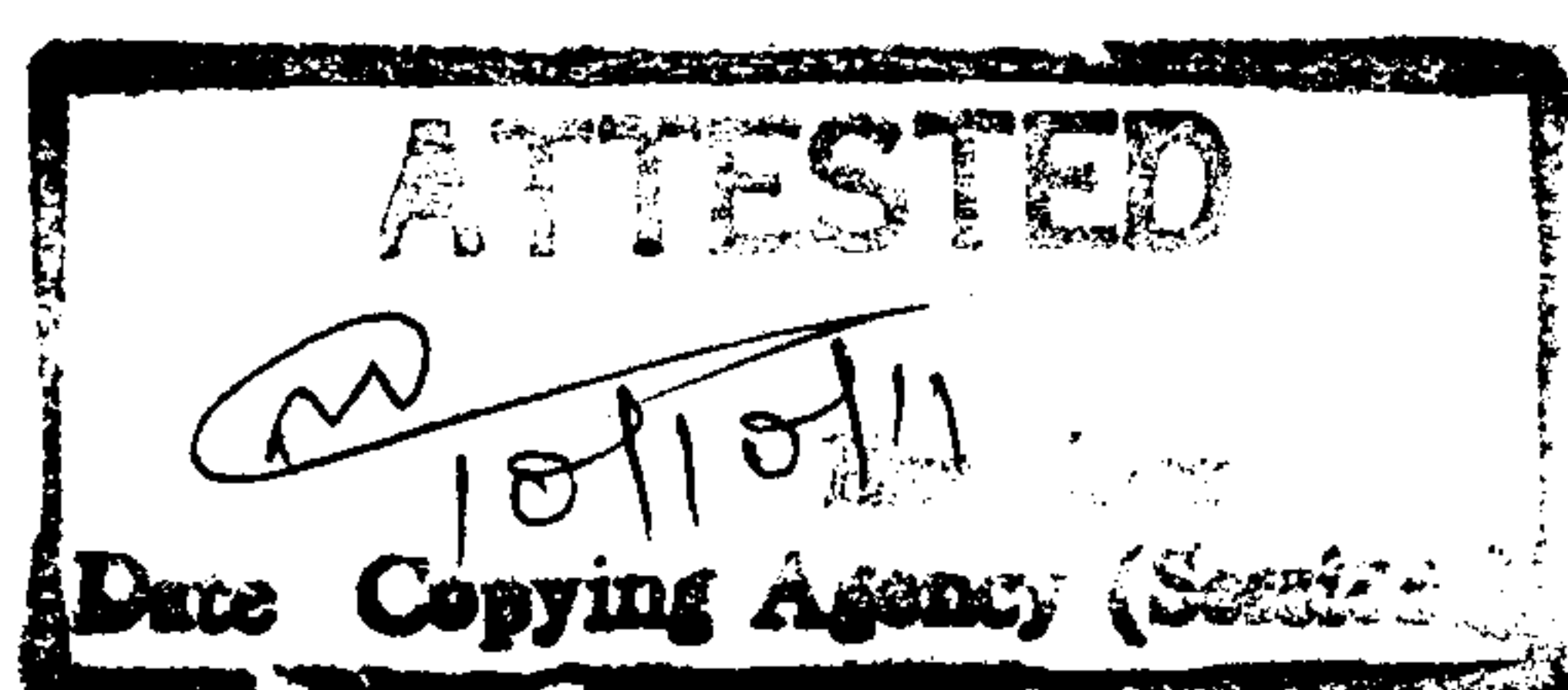


Directions of Hon'ble High Court, under orders of the Ld. Distt. & Sessions Judge, this case was transferred on April 2, 2005 from the Court of Ld. ACMM to the Court of Sessions, then presided over by Ms. Asha Menon, the then Addl. Sessions Judge, Delhi.

6. Vide order dated October, 26, 2006, a notice for the offence punishable under Section 24 read with section 27 of the SEBI Act was served upon the A1(company), A3 & A4 as A2 & A5 were not appeared till that date. A3 & A4 pleaded not guilty and claimed trial. Subsequently, vide order dated May 1, 2009, A2 & A5 were declared proclaimed offenders.

7. To prove its case, complainant has examined only one witness named Ms. Versha Aggarwal, Asstt. General Manager, SEBI. Thereafter, A3 & A4 were examined under Section 313 Cr.P.C wherein A3 Manoj Saxena took the plea that A2 Shyam Mohan Pandey was his friend and told him that he had intended to float a company and asked him to become a formal director. It was stated that in good faith, he had accepted his request and stated that he had never participated in the affairs of the company accused. It was further stated that A2 was Managing Director of the company accused and was looking after all the affairs of the company accused. He further submitted that A2 told him that he intended to wind up the company and asked him to furnish his

[Handwritten signature]
27/11/11



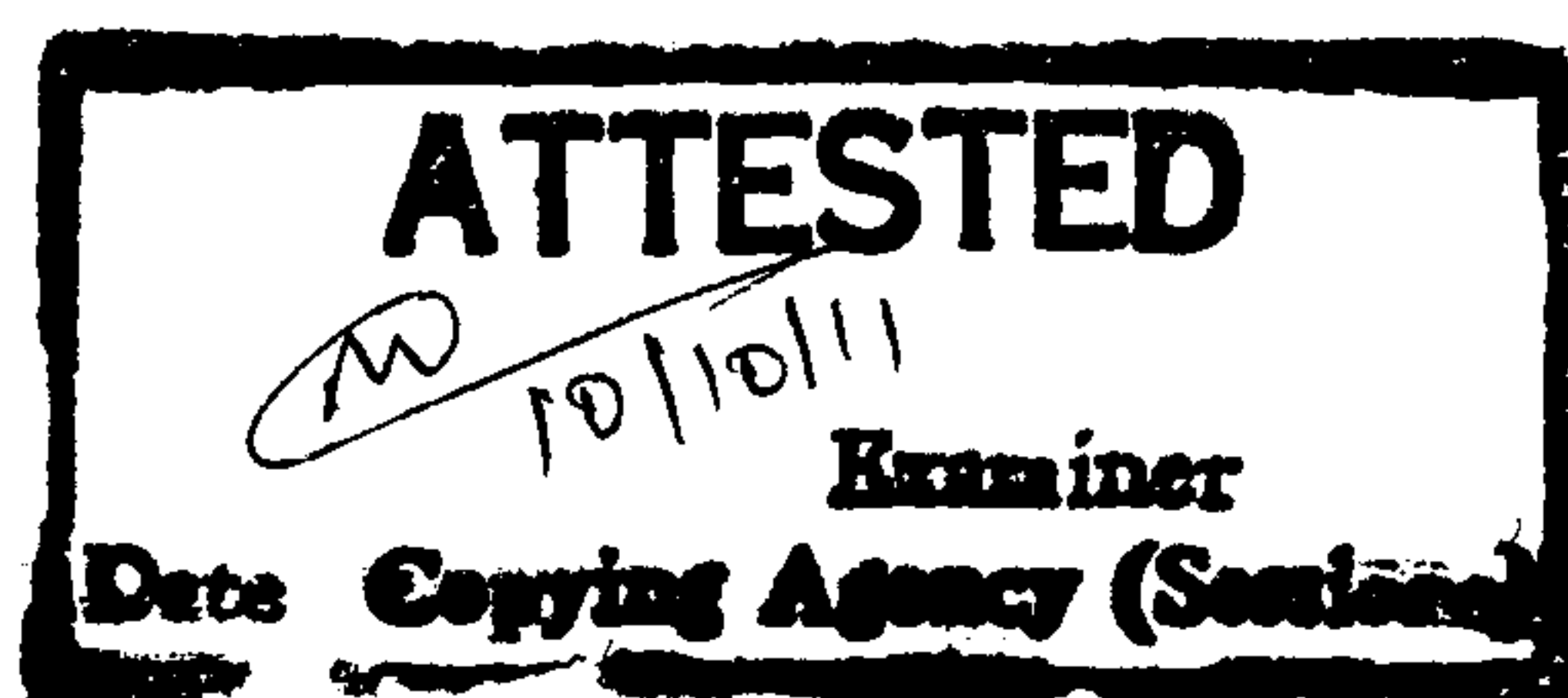


SEBI Vs. Kudrat Agro Tech Ltd. & ors.

resignation and stated that on his request, he had tendered his resignation on February 10, 1999 which was accepted by the company accused. Similarly, A4 Sh. R. S. Dixit also stated that he had joined the directorship of company accused on the request of A2, who was his friend and in good faith, he had accepted his request and stated that he had never participated in the management of the company accused as all affairs were being managed by A2, who was Managing Director of company accused. He further stated that when A2 told him that he intended to wind up the company, he had submitted his resignation to him on April 15, 1998, an intimation of which was also sent to ROC, Kanpur.

8. To prove their innocence, both the accused persons have examined themselves as DW1 & DW2 respectively.
9. I have heard arguments advanced by Sh. Sanjay Mann, Advocate, Counsel for complainant and Sh. P.K. Malik, Advocate, Counsel for A3 & A4, perused the record carefully.
10. Learned defence counsel vehemently contended that the notice served upon accused persons was defective as it was served upon M/s Sai Plantation & Land Development (I) LTD., Shiv Charan Singh Dhillon and Smt. Sukhvinder Kaur, who were not

CC No. 25/10



Page no. 6 of 19

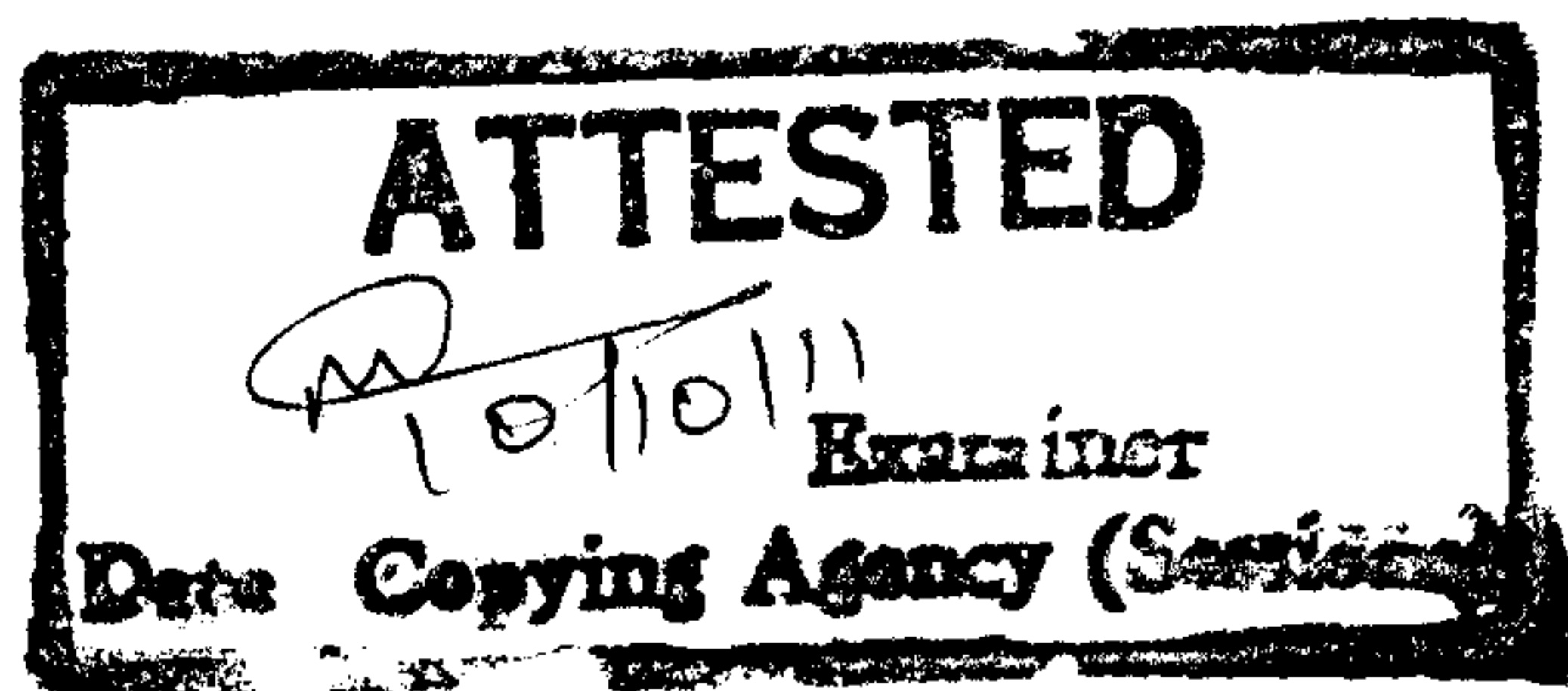


SEBI Vs. Kudrat Agro Tech Ltd. & ors.

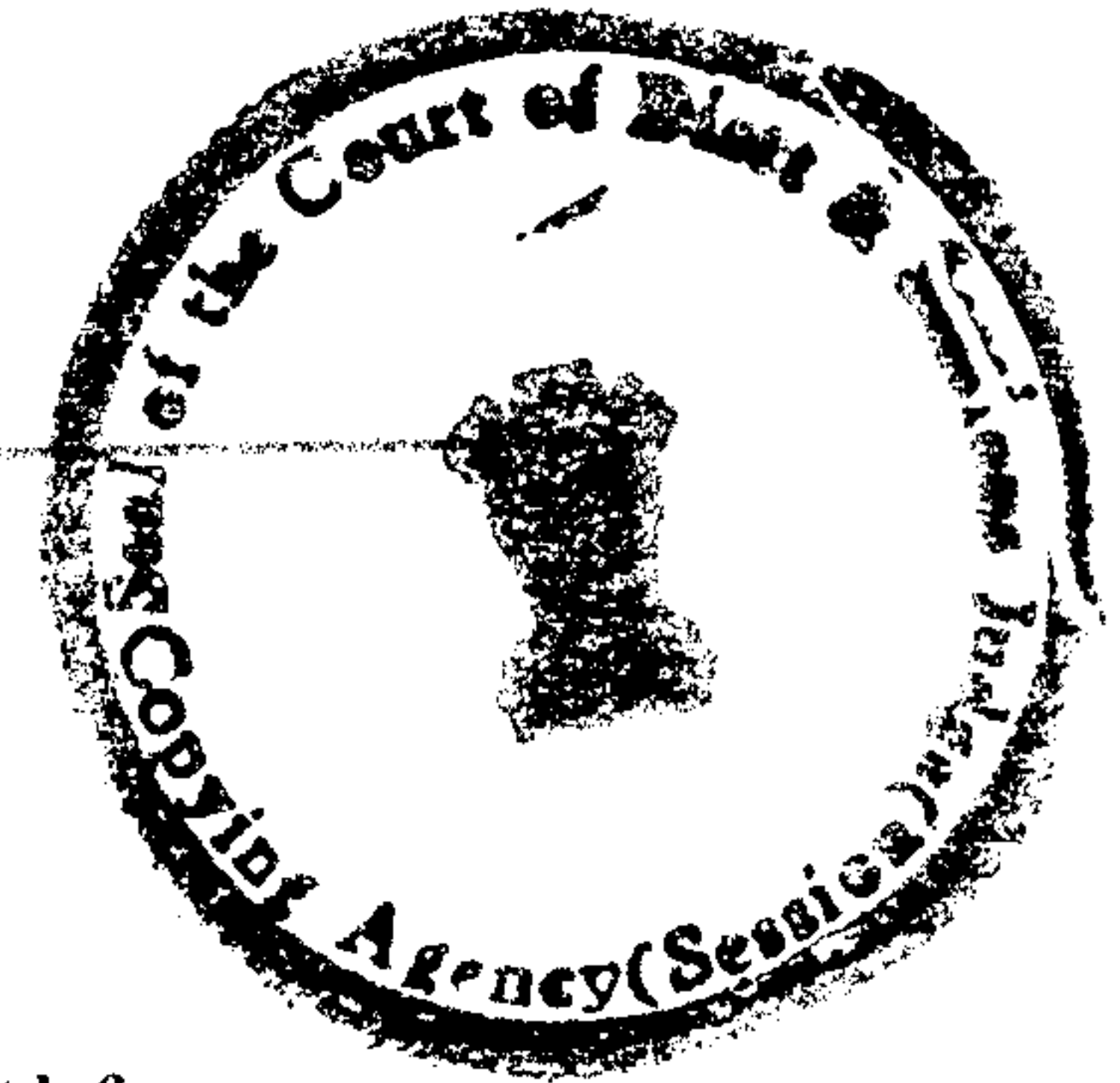
the party in the present complaint. It was argued that since no proper notice was served upon the accused persons, entire proceedings vitiated. This contention is opposed by learned counsel for complainant by arguing sagaciously that there is only typographical error in the notice and it does not affect the complainant's case in any manner.

11. Admittedly, notice was served upon the accused persons on October 26, 2006. Perusal of the notice reveals that it was served upon three accused persons namely Kudrat Agro Tech. Ltd., Mr. Manoj Saxena and Sh. R. S. Dixit who are accused no.1, 3 & 4 respectively. Thus, the contention of learned defence counsel that same was not served upon the accused persons is without any substance. However, in the second paragraph, instead of mentioning the name of above three accused persons, the name of M/s Sai Plantation & Land Development (I) Ltd., Shiv Charan Singh Dhillon and Smt. Sukhvinder Kaur were mentioned inadvertently. It appears that their name had been mentioned due to some clerical error. This error does not affect the complainant's case in any manner because in the first paragraph of notice, it has been clearly mentioned that notice was being served upon A1 i.e. Kudrat Agro Tech Ltd., A3 Manoj Saxena and A4 R.S. Dixit. Merely, fact that in subsequent paragraph, their name is not mentioned due to some clerical mistake is not sufficient to draw an

CC No. 25/10



Page no. 7 of 19



SEBI Vs. Kudrat Agro Tech Ltd. & ors.

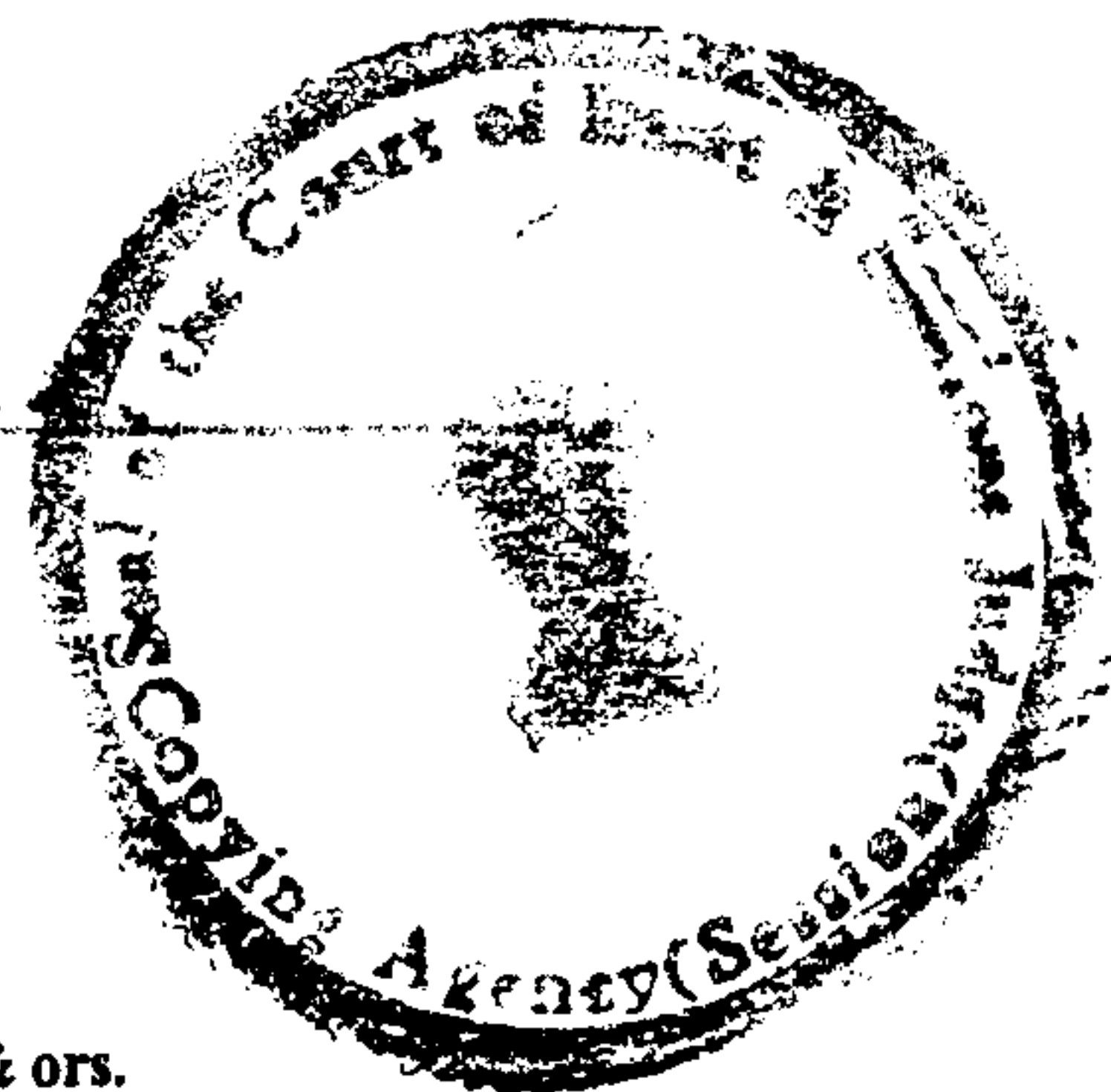
inference that the said error caused any prejudice to the accused persons. There is nothing on record to show that accused persons were not aware about the contents of the notice, which was served upon them. Admittedly, the said notice was signed by A3 & A4, which further proves that they had signed the same after going through its contents and allegations made therein. Even at that time, the accused persons had not pointed out the said mistake. Even during the course of arguments, counsel failed to point out how the said mistake prejudiced the defence of accused persons.

12. To my mind, the said inadvertent error occurred in the notice does not cause any prejudice to the accused persons, thus in my opinion, it does not affect the complainant's case in any manner.

13. Learned defence counsel contended that since both the accused persons had resigned in the year 1998-99, they cannot be held liable for violations, if any, committed by company accused. It was argued that both the accused persons were inducted as directors in the company accused by A2 Shyam Mohan Pandey, who was sole in-charge and, responsible to, the company accused for the conduct of its business. It was contended that accused persons never participated in the management of company

[Handwritten signature]
27/5/11





SEBI Vs. Kudrat Agro Tech Ltd. & ors.

accused.

14. On the other hand, learned counsel appearing for the complaint refuted the said contention by arguing that accused persons were directors at the time when the fund was mobilized by the company accused. It was contended that being the directors, they were also in-charge of, and responsible to, company accused for the conduct of its business, thus, are also liable for the violations committed by the company accused.

15. Before dealing with the above contention, I deem it appropriate to decide whether company accused had committed any violation at the time of mobilizing funds through CIS or not.

16. Admittedly, company accused was incorporated on December 4, 1996. It is admitted case of the company accused that company accused had sent a letter dated December 30, 1997 to the SEBI which is exhibited as CW1/2 and furnished certain information. According to the said letter, company accused had mobilized ₹14,84,575/- through four CIS. Thereafter, company accused had sent another letter dated May 27, 1998, which is exhibited as CW1/4 wherein company accused intimated the SEBI that company accused had mobilized funds to the tune of

27/9/98





SEBI Vs. Kudrat Agro Tech Ltd. & ors.

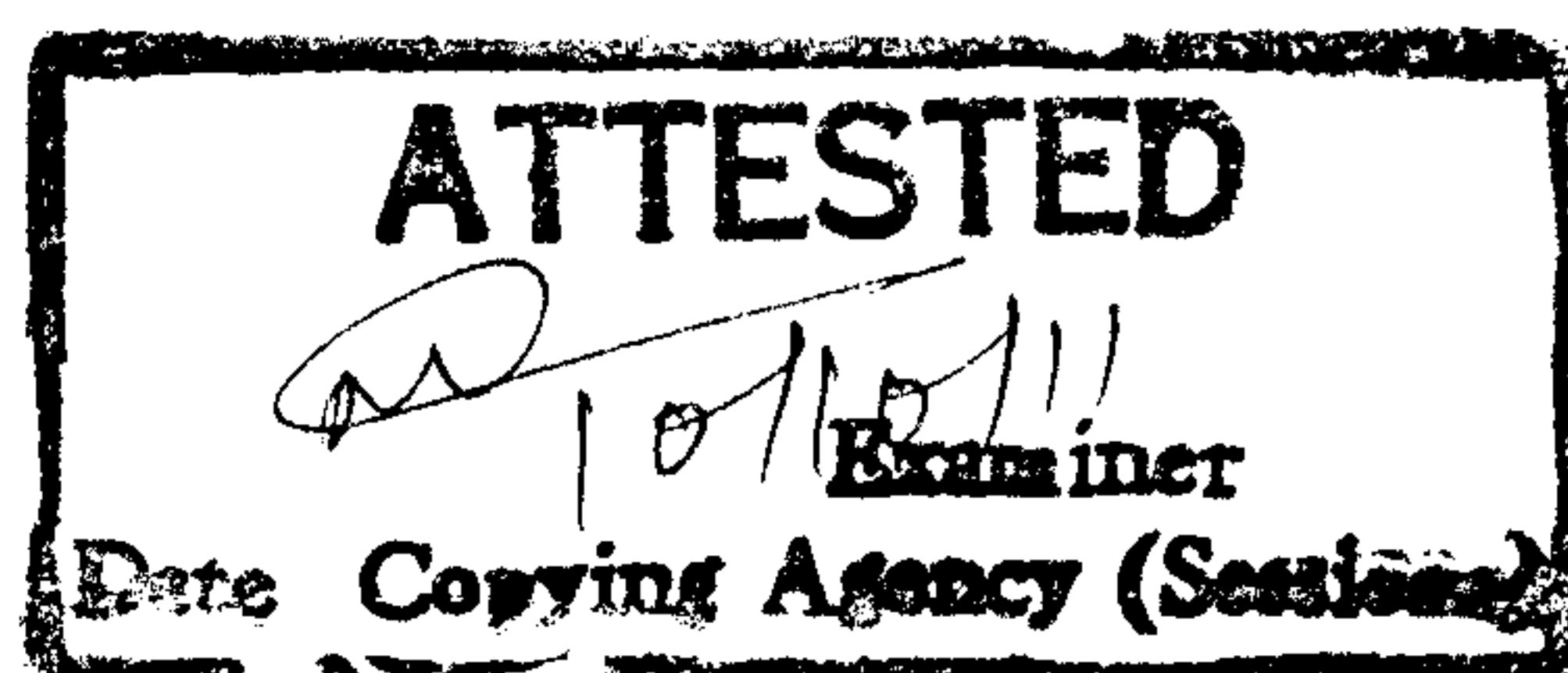
₹19, 47, 931.50p till April 30, 1998. Vide its letter dated June 26, 1998, which is exhibited as CW1/5, company accused furnished an undertaking to the SEBI that company accused had not floated any new CIS subsequent to public notice issued by SEBI on December 18, 1997 and shall not raise further fund under the existing scheme unless company obtained rating for the existence schemes.

17. 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 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 the schemes were launched by the company accused in 1997-1998, company accused had not obtained any registration from the Board, thus company accused had violated the provisions of Section 12(1B) in the year 1997-1998 itself by mobilizing funds through CIS without obtaining certificate of registration from the SEBI.

18. Now question may arise that the regulations were notified in October 1999 only and there was no regulation in the year 1997-1998 when company accused had mobilized funds through

27/12

CC No. 25/10



Page no. 10 of 19



SEBI Vs. Kudrat Agro Tech Ltd. & ors.

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 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

27/2/98

CC No. 25/10



Page no. 11 of 19



SEBI Vs. Kudrat Agro Tech Ltd. & ors.

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”.

19. 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 1997-98 without obtaining the certificate of registration which is in 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.

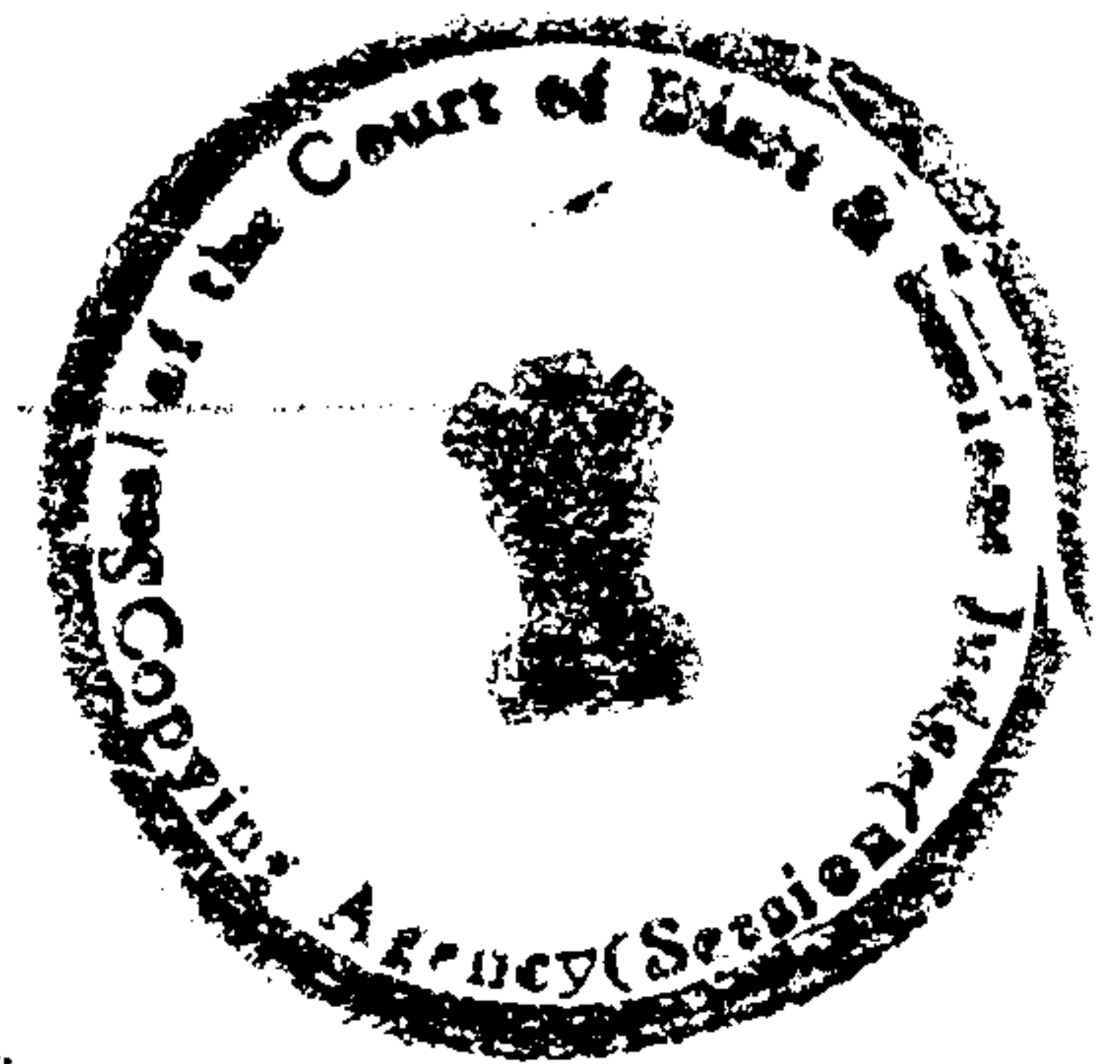
20. It is also undisputed fact that CIS regulations were notified

27/11

CC No. 25/10



Page no. 12 of 19



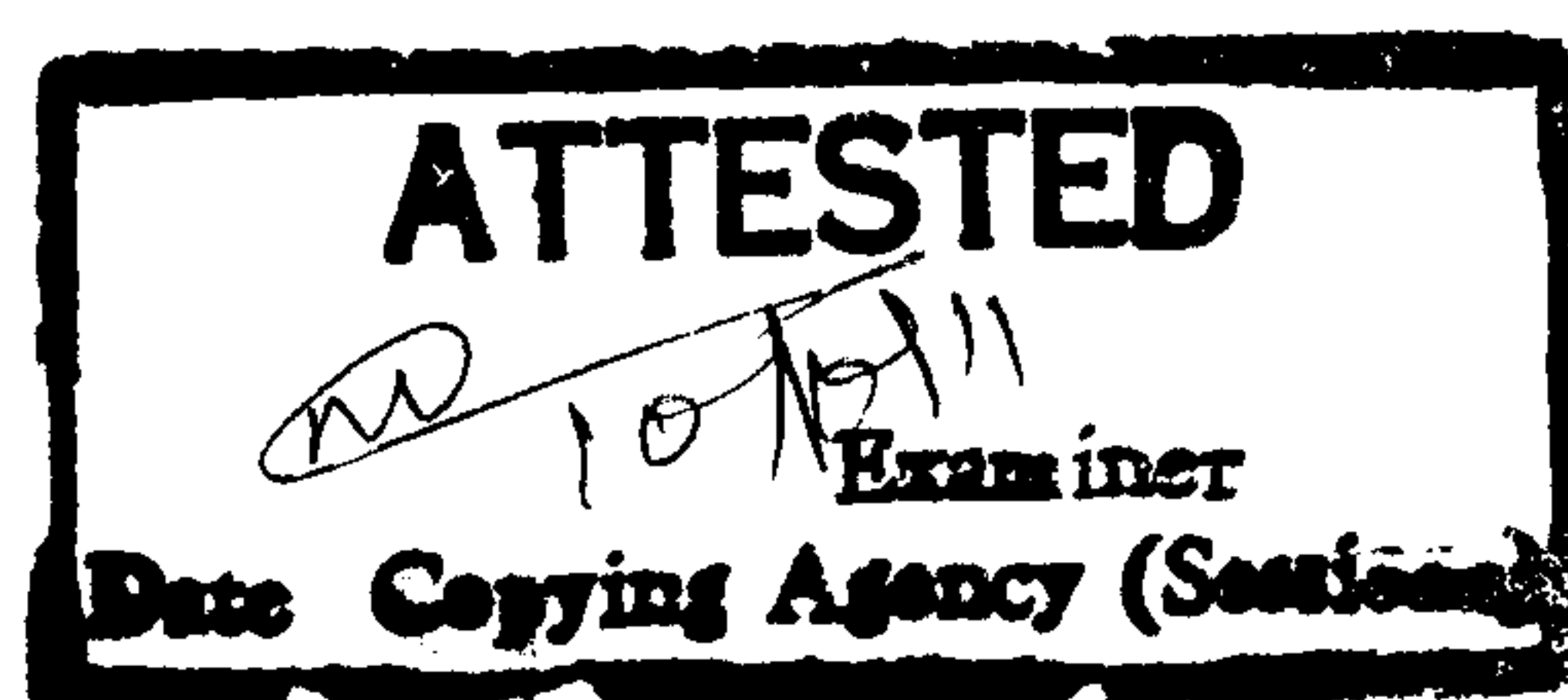
SEBI Vs. Kudrat Agro Tech Ltd. & ors.

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 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 provision 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.

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

27/9/11

CC No. 25/10



Page no. 13 of 19



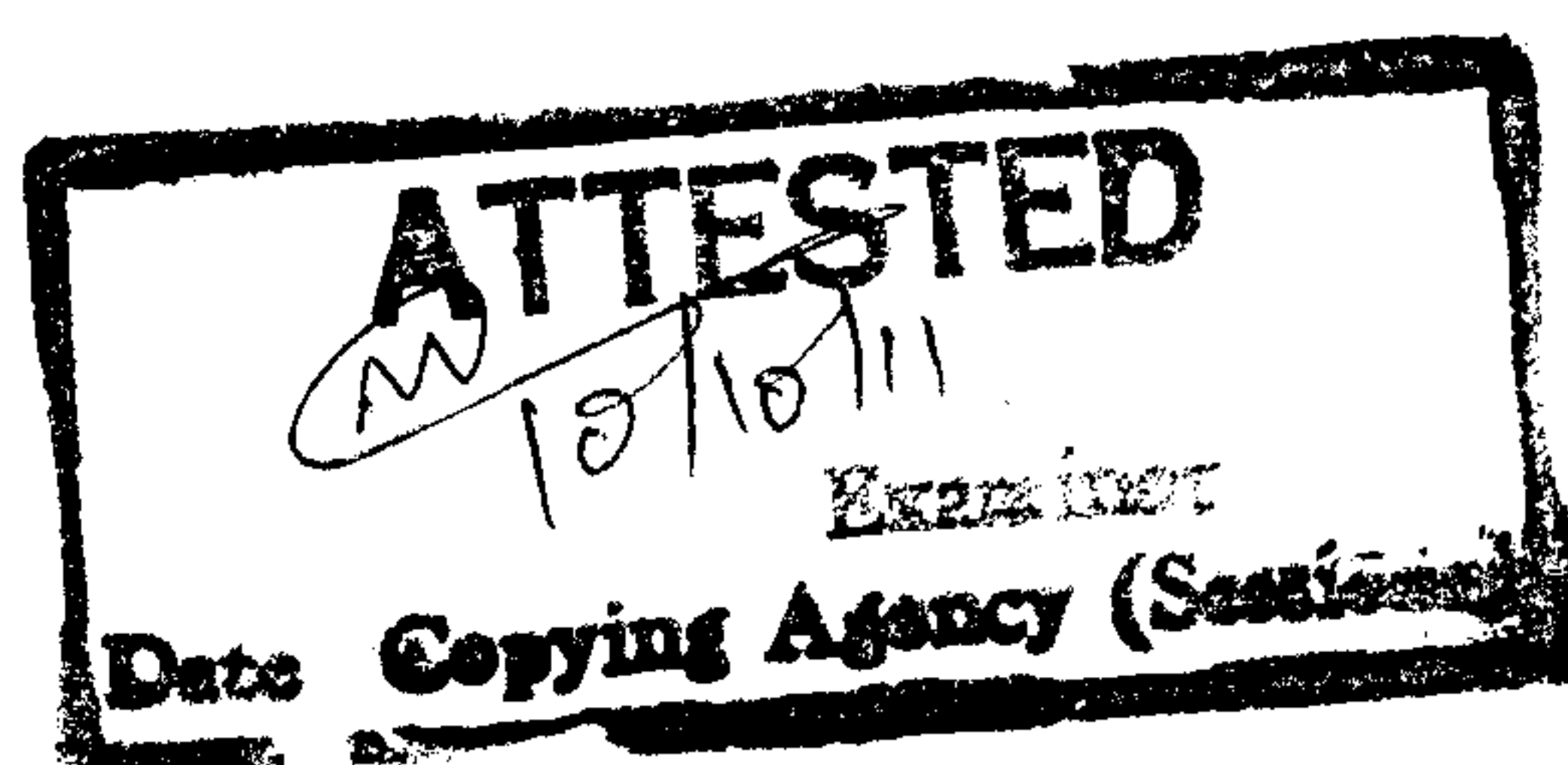
SEBI Vs. Kudrat Agro Tech Ltd. & ors.

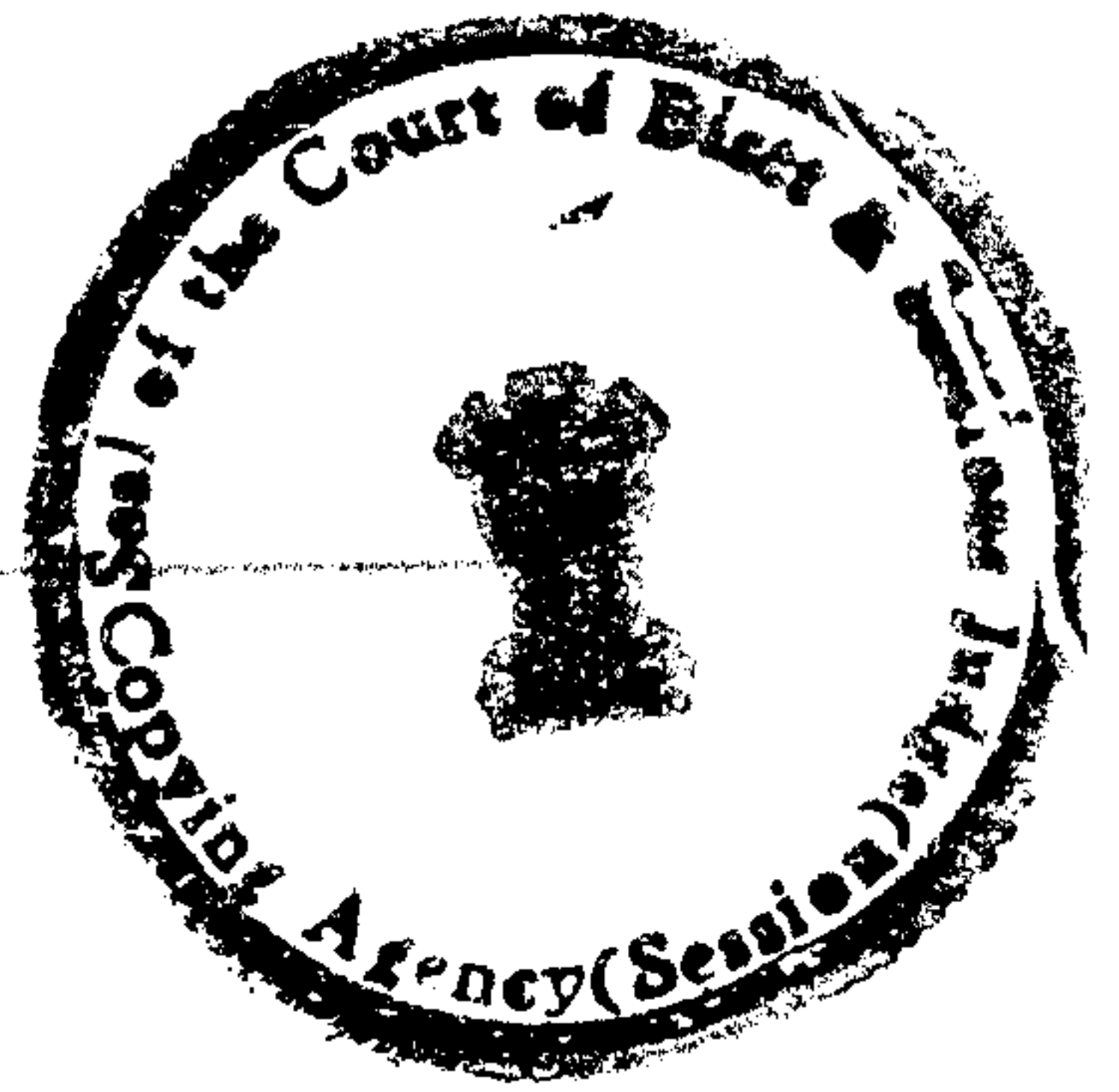
22. Now coming to the contention raised by the learned counsel appearing for accused persons whether A3 & A4 are liable for the violation committed by company accused or not?
23. It is admitted fact that A3 & A4 were the directors of company accused when company accused was incorporated. Both accused took the plea that they had resigned from the company accused on April 15, 1998 & February 10, 1998 respectively. Both also took the plea that company accused was being look after by A2 and they were not liable for the affairs of the company accused.
24. As per the letter exhibited as CW1/2, company accused had mobilized funds to the tune of ₹14,84,575/- till December 31, 1997. It means that the said fund was mobilized when A3 & A4 were directors of the company accused. As per the letter exhibited as Ex. CW1/4, company accused had mobilized funds to the tune of ₹19,47,931.50p till April 30, 1998. It again means that both were directors at that time. However, A4 Sh. R.S. Dixit had submitted his resignation on April 15, 1998.
25. Name of both the accused persons are also mentioned as first directors in the Memorandum of Articles and Association of company accused. In the said Memorandum and Articles of

27/11/11

CC No. 25/10

Page no. 14 of 19





SEBI Vs. Kudrat Agro Tech Ltd. & ors.

Association of company accused, it is also mentioned how company will be managed. In this regard, the clause No. 83 & 86 are relevant and same are reproduced as under:-

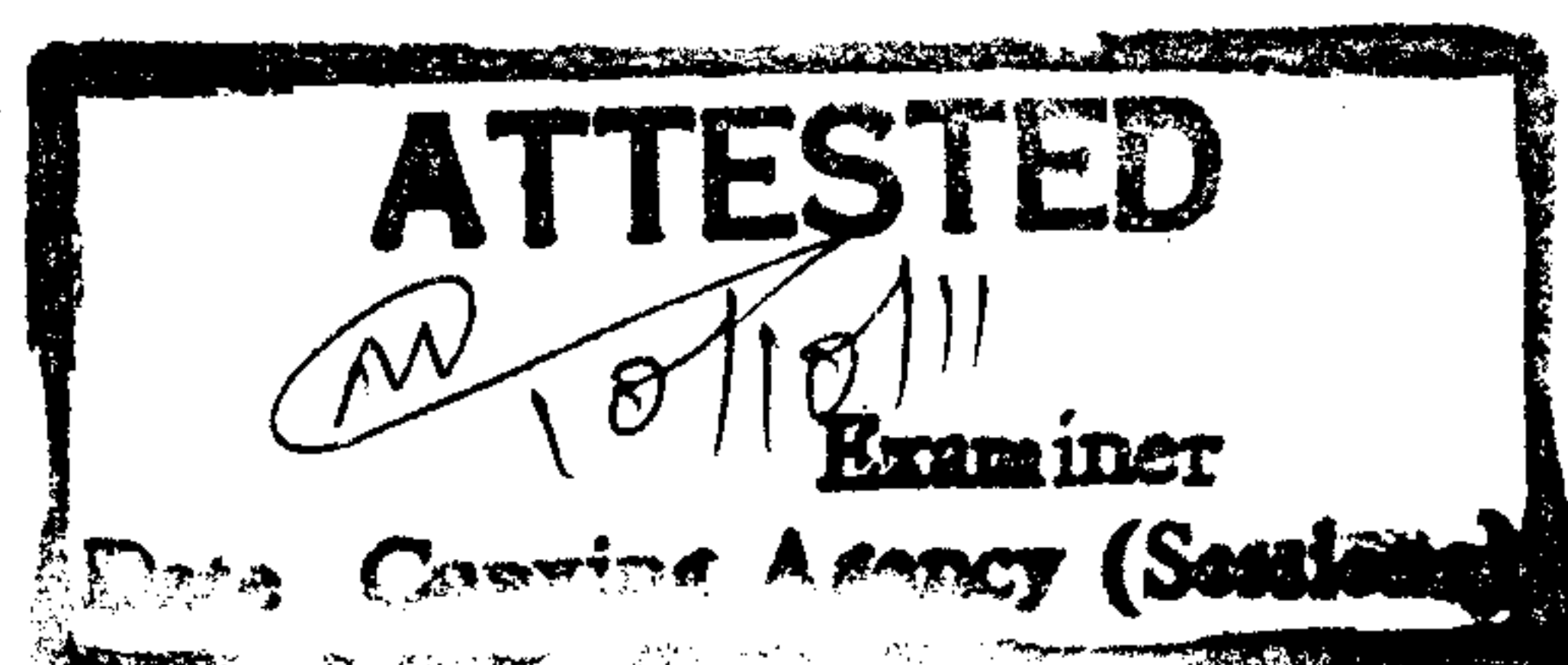
83. *The business of the Company shall be carried on by the Board of Directors through the Chairman and/or the Vice Chairman and/or the Managing Director and/or the Executive Director appointed by the Board of Directors for this purpose, and/or in such other manner as they shall think fit, subject always to the direction, control supervisions of the Board of Directors at all times.*

86. *The Chairman, the Vice Chairman, the Managing Director, the Director appointed by the Board of Directors may with the approval of the Board of Directors, from time to time secure the payment of such moneys in such manner and upon such terms and conditions as they think fit and particulars by the issue of debentures or bonds of the Company or by mortgage or charge of all or any part of the property of the Company and of the uncalled capital for the time being and to execute any documents or documents on behalf of the Company.*

(emphasis supplied)

26. On perusal of the said clauses, it becomes crystal clear that the business of company accused was to be carried on by the members of Board of Directors through its Chairman, Vice-

[Signature]
22/11/14



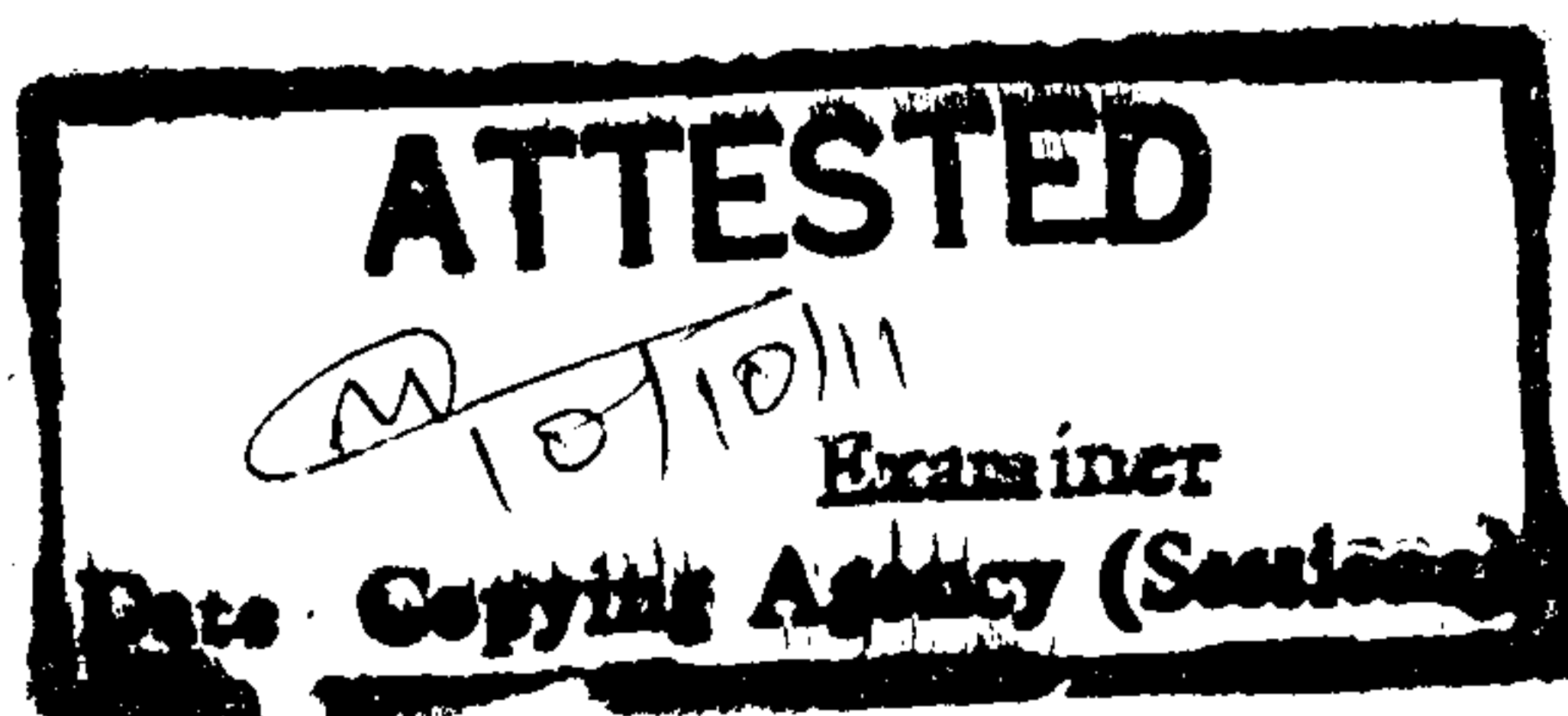


SEBI Vs. Kudrat Agro Tech Ltd. & ors.

chairman, Managing Director, Executive Director but they shall act as per the direction, control and supervision of the members of board of directors at all times. It further becomes clear that the said Chairman/Vice-chairman/Executive Director with the approval of Board of directors may raise funds through debentures or bonds on behalf of the company. Since, A3 and A4 were directors of the company accused, they were also members of the Board of Directors and the Managing Director was not authorized to mobilize funds unless it was approved by the board of directors. Thus, no individual director was authorised to raise fund unless it is approved by the board of directors. Thus, the contention of learned counsel that the funds were mobilized only by A2 being managing director of company accused is without any substance or basis. Being managing director, A2 may be competent to take necessary action for the mobilization of fund but he was not competent to take the decision whether fund was to be generated or not, the said decision was to be taken by the board of directors only.

27. Assuming for the sake of arguments, that A2 had mobilised funds without the consent of A3 & A4 or approval of the board of directors, it means that A3 & A4 were negligent in performing their duties being the directors of the company accused and due to their negligence, A2 was able to mobilize fund purporting that the

CC No. 25/10



Page no. 16 of 19



SEBI Vs. Kudrat Agro Tech Ltd. & ors.

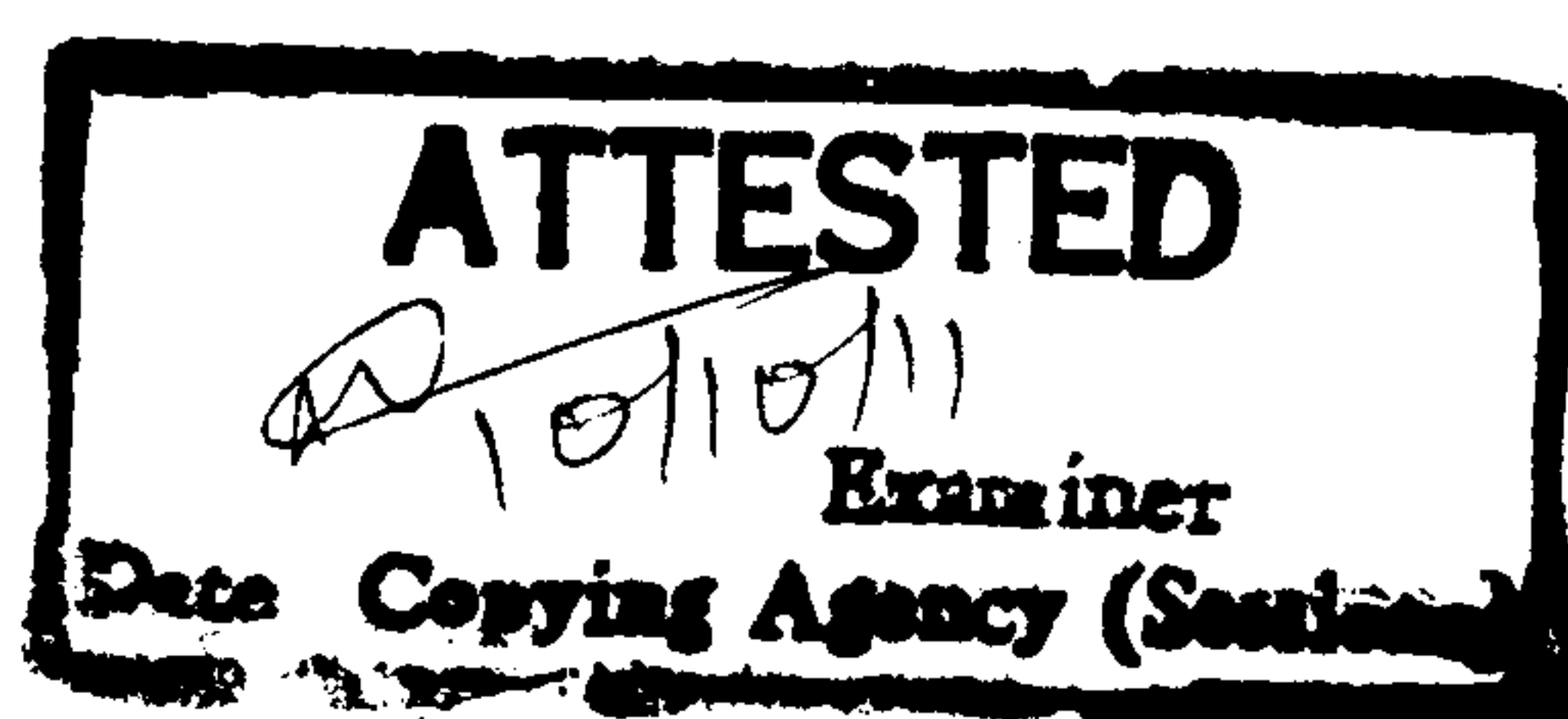
scheme was approved by Board of directors. Thus, A3 & A4 are liable for the said violation under clause (2) to Section 27 of the SEBI Act.

28. Considering the above discussion, I am of the view that A3 & A4 cannot escape from their liability by pleadings that since they had resigned from the directorship subsequently i.e on April 15, 1998 and on February 10, 1999, they cannot be held liable for the violations committed by the company accused at the time of raising funds. They may not be liable for the violations committed by the company accused after the date of their resignation but if company accused had violated any provisions of law before their resignation, they cannot escape from their liability by merely saying that they had submitted their resignation subsequently and they were not looking after the affairs of the company.

29. Learned counsel contended that A2 Shyam Mohan Pandey had played fraud with the SEBI by stating in the letter exhibited as Ex. CW1/4 that A4 Sh. R. S. Dixit was director of company accused as on May 27, 1998 whereas company accused himself admitted that A4 Sh. R. S. Dixit had resigned from the directorship on April 15, 1998. Perusal of said said document reveals that company accused had intimated the SEBI on May 27, 1998 that A4 was one of the directors in the company accused as on May 27,

27/5/11

CC No. 25/10



Page no. 17 of 19



SEBI Vs. Kudrat Agro Tech Ltd. & ors.

1998 whereas company accused had intimated ROC that said Sh. R. S. Dixit ceased to be the director of the company accused w.e.f April 15, 1998. This proves that company accused had furnished false information to the SEBI through its letter exhibited as Ex. CW1/4 but it does not exonerate A4 from his liability for the violations which company accused had committed prior to submitting his resignation i.e. April 15, 1998.

30. Since A3 & A4 were members of board of directors when funds were mobilized by the company accused through various CIS, onus was upon the accused persons to show that they had exercised all due diligence to prevent the company accused from mobilizing funds in violation of Section 12(1B) of the Act. But during the trial, they failed to produce any material on record to show that they acted diligently to prevent the company from violating Section 12 (1B) of the Act. Being the members of the board of directors, they are liable for the violations committed by the company accused at the time of mobilizing funds.

31. 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 various CIS in violation of Section 12(1B) of the SEBI Act and also violated regulation no. 5 & 73 of

CC No. 25/10



Handwritten signature

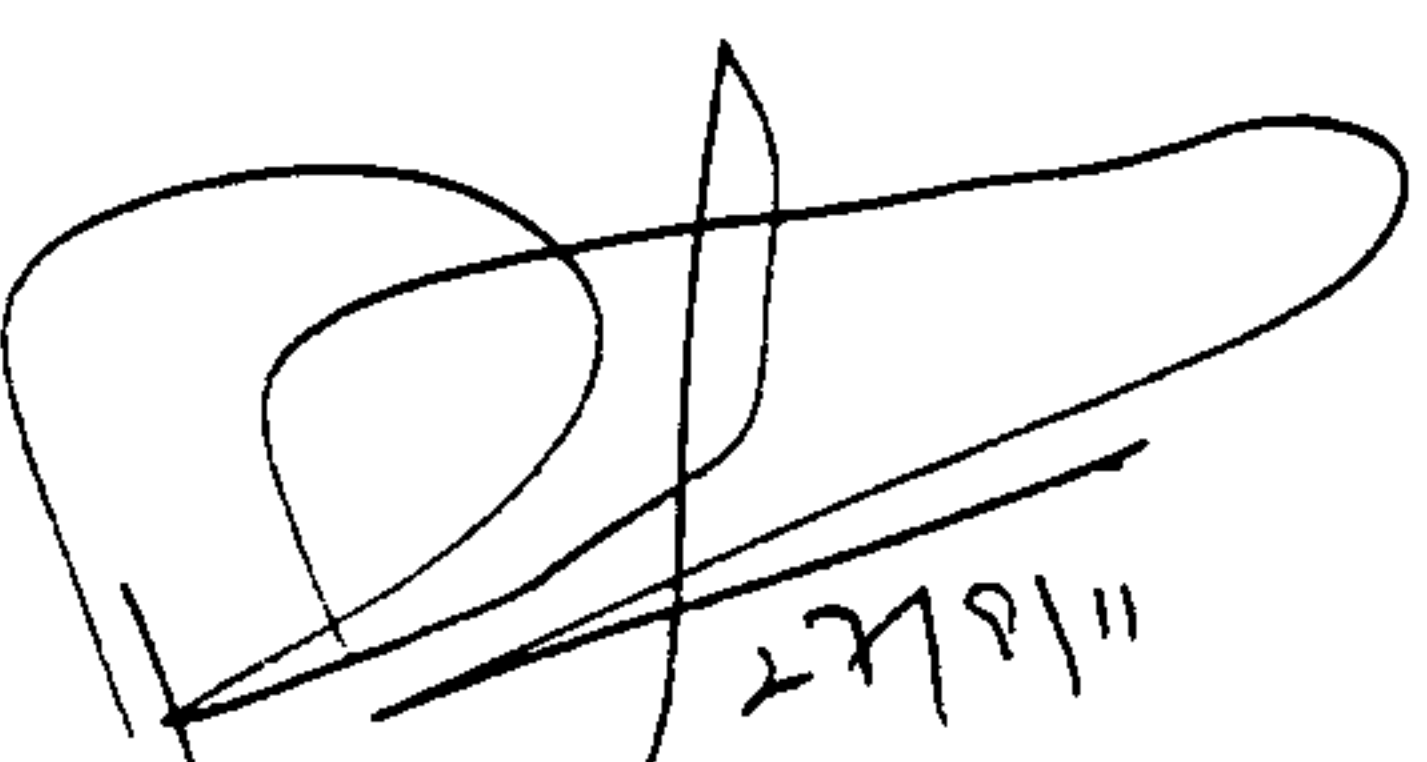
Page no. 18 of 19



SEBI Vs. Kudrat Agro Tech Ltd. & ors.

CIS Regulations. Complainant has also established that A3 & A4 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 in terms of Section 27 of the Act. Thus, I hereby hold A1 i.e Kudrat Agro Tech Ltd., A3 Sh. Manoj Saxena and A4 Sh. R. S. Dixit guilty for the offence punishable under Section 24 (1) read with section 27 of the SEBI Act.

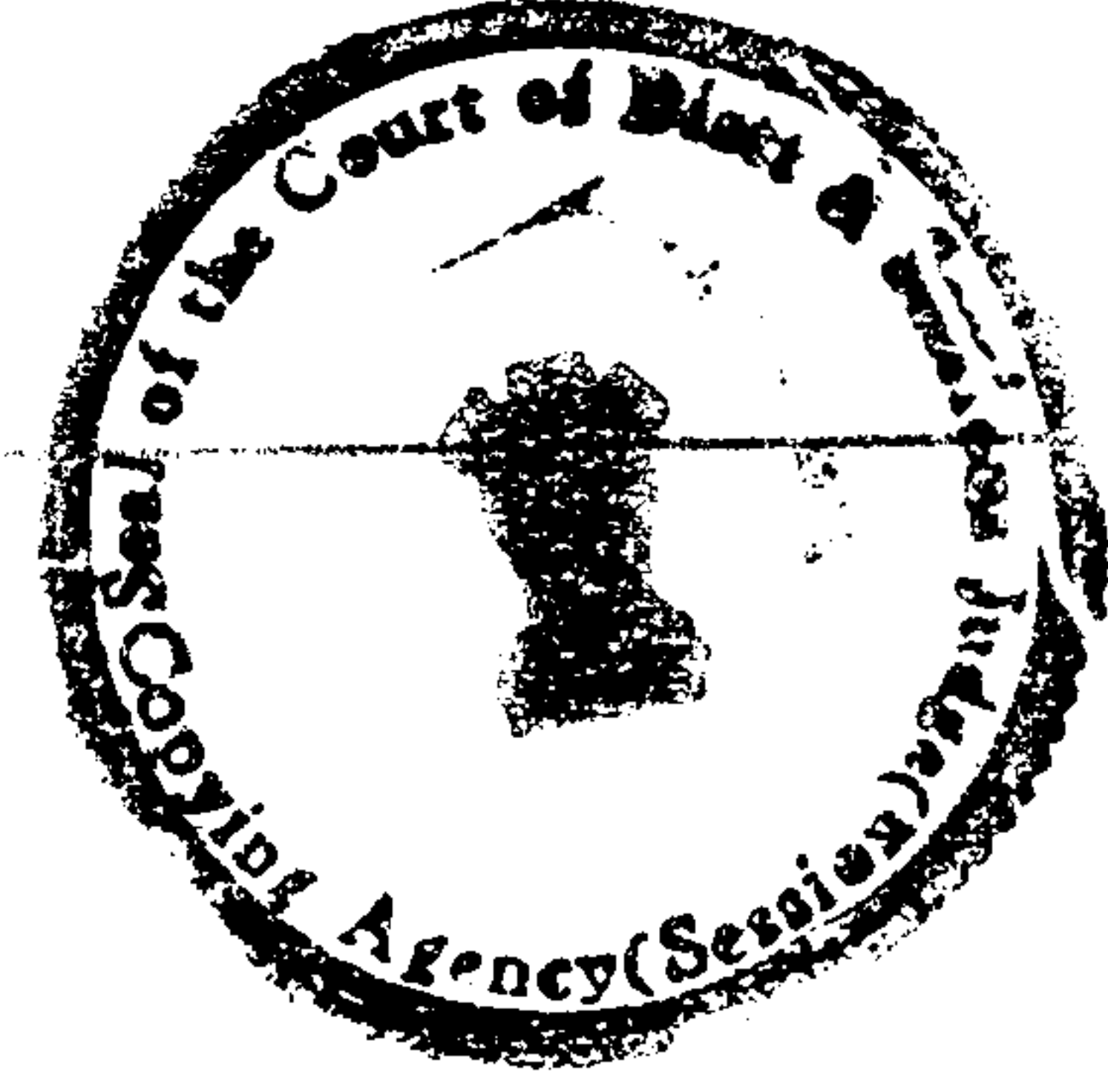
*Announced in the open Court.
On this 27th day of September 2011*


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

*Copy given to the Convicts
in open Court at for.*

*Copy Received on behalf
of Accused R.S. Dixit &
Manoj Saxena
S. K. Jha
Adv.
5/10/11*





CC No. 25/2010
Item no.7

28.09.2011

Present: Sh. Sanjay Mann, Advocate, Counsel for SEBI
Sh. P.K.Malik, Advocate, Counsel for convict No.2 & 3
Convict no.1 is represented by none.

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

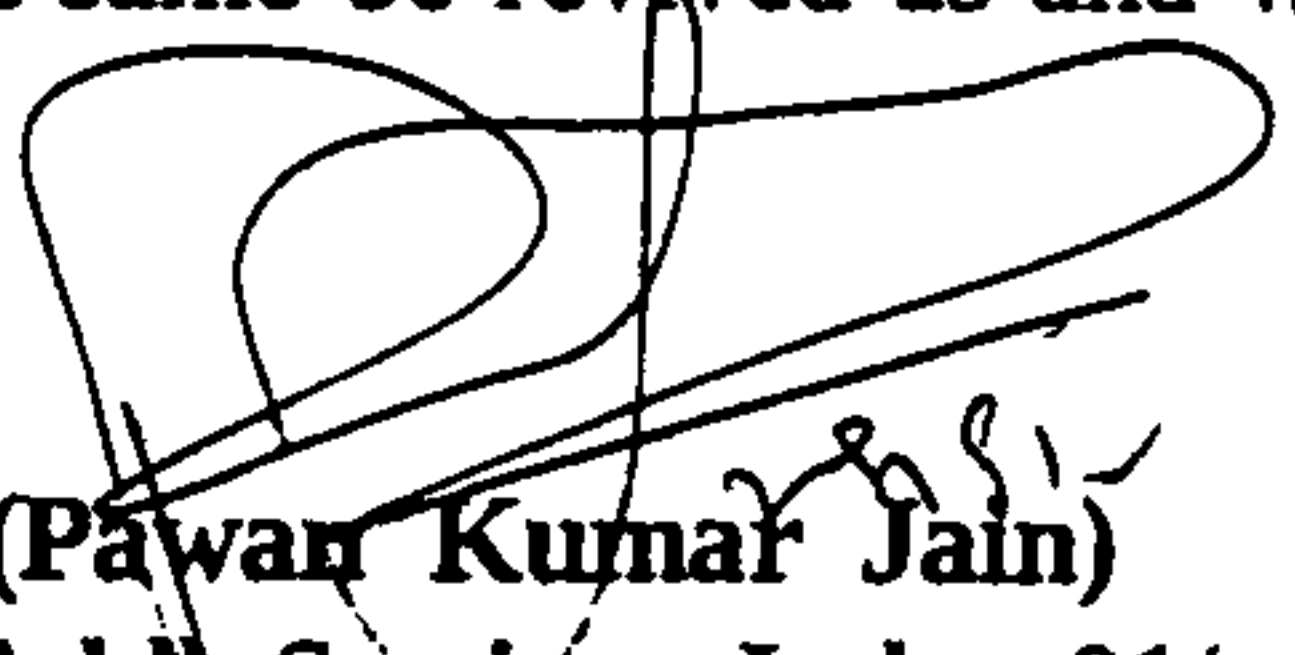
Vide separate order, a fine of ₹ 30,000/- is imposed upon each of convicts i.e Convict No.1 to 3 in default Convict nos. 2 & 3 shall undergo three month simple imprisonment for the offence punishable under Section 24 (1) read with Section 27 of the SEBI Act.

Fine amount is paid by convicts no. 2 & 3.

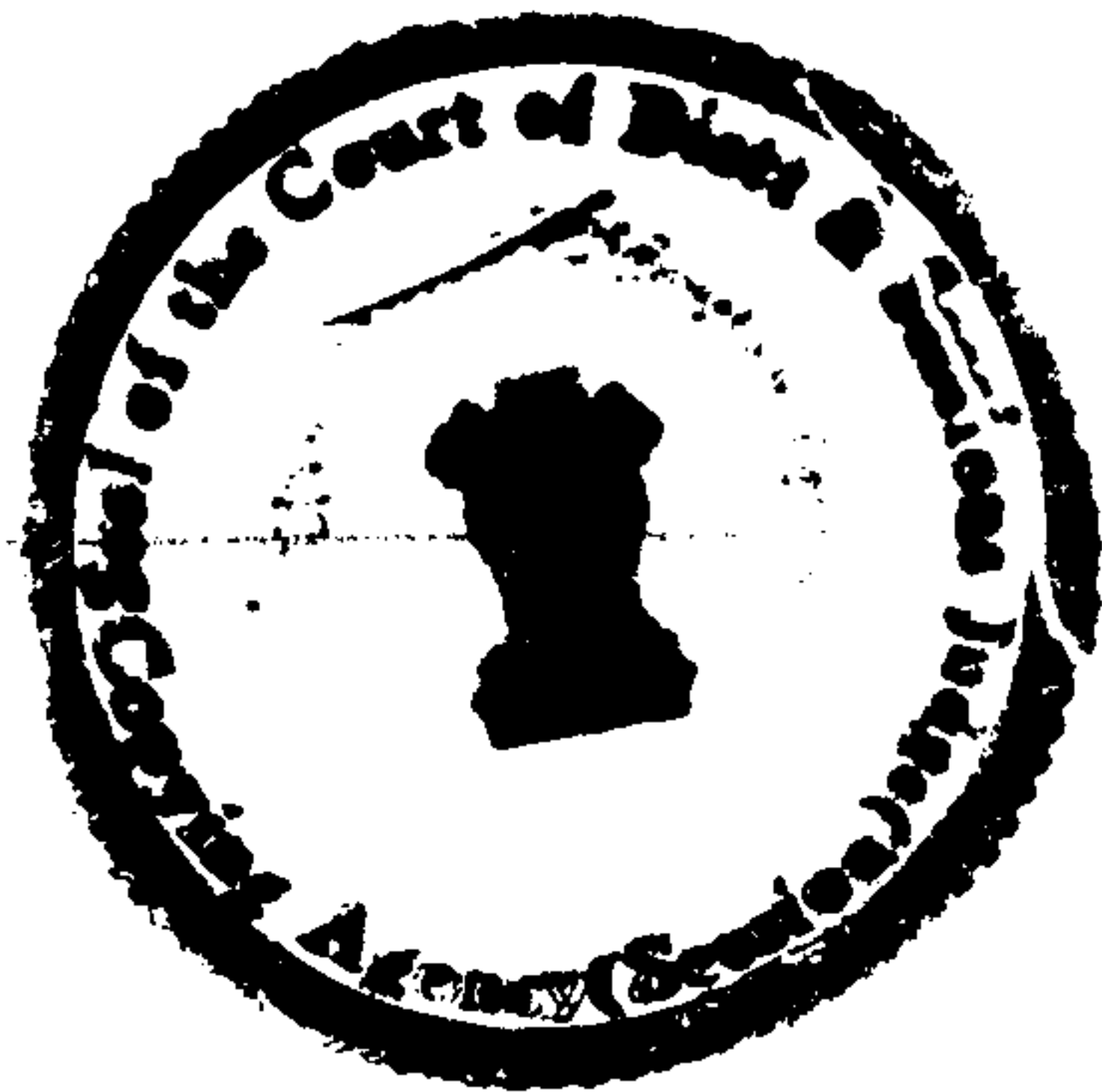
Counsel for complainant submits that complainant has no information about the property of convict no.1 (company accused) and states that complainant will take action as and when complainant is able to trace out any property of convict no.1(company accused). Request allowed.

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

Since accused no.2 & 5 are proclaimed offenders, file be consigned to record room with direction that same be revived as and when they are apprehended.


(Pawan Kumar Jain)
Addl. Sessions Judge-01/
Central/THC/Delhi
28.09.2011





SEBI Vs. Kudrat Agro Tech Ltd. & ors.

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

Complaint Case No. 25 of 2010
ID No: 02401R5171622004

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.

Versus

1. **Kudrat Agro Tech Ltd.,**
a company incorporated under the Companies Act, 1956, having its Regd. Office at: 13/392 A, Civil Lines, Kanpur-208001 and also having office at 104 A/278, P Road, Near Har Sahai Jagdamba Sahai College, Kanpur.

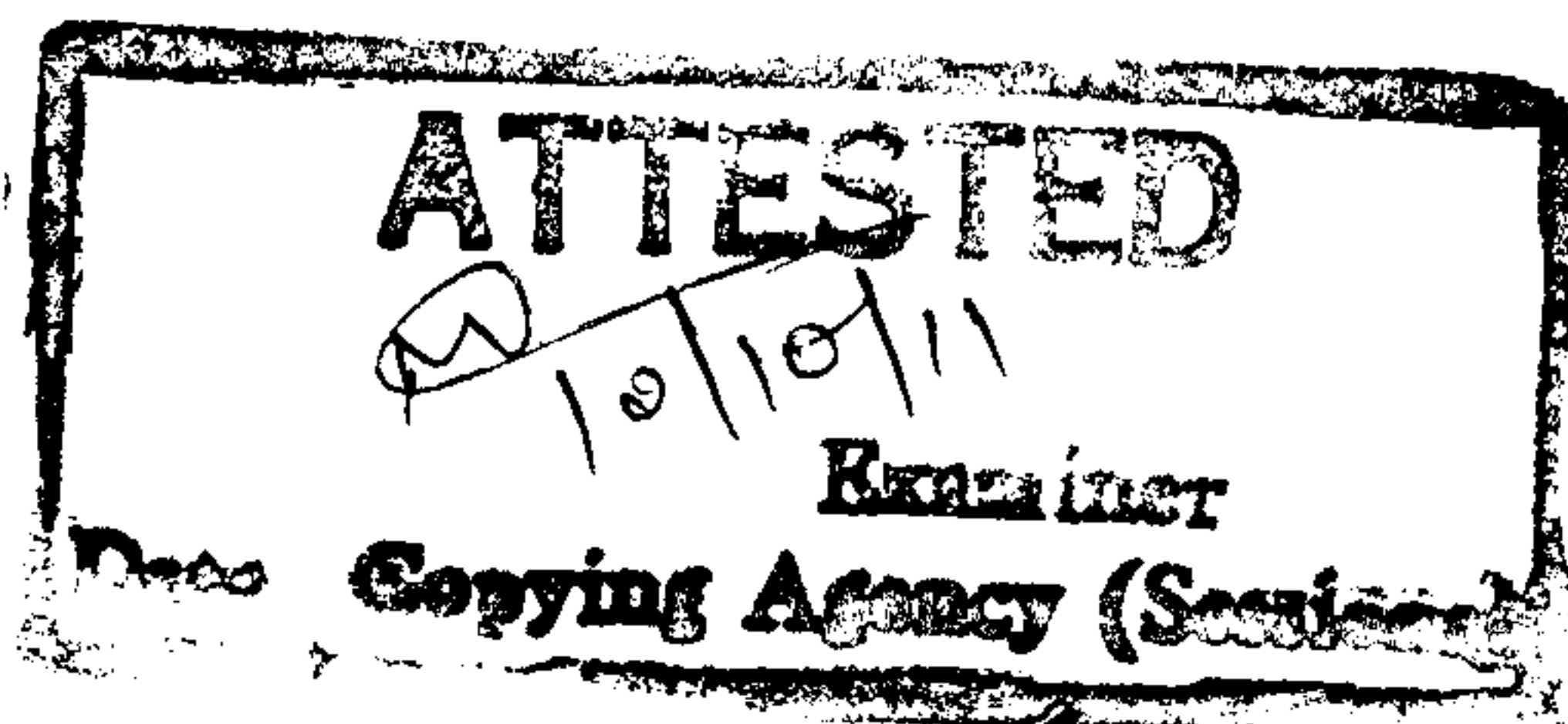
.....Convict no.1

2. **Sh. Manoj Saxena**
S/o S.P. Saxena,
Director of Accused No.1,
R/o B-24, C.S.A Campus Colony,
Nawab Ganj, Kanpur, U. P.

.....Convict no.2

CC No.25/2010

Page no. 1 of 4





SEBI Vs. Kudrat Agro Tech Ltd. & Ors.

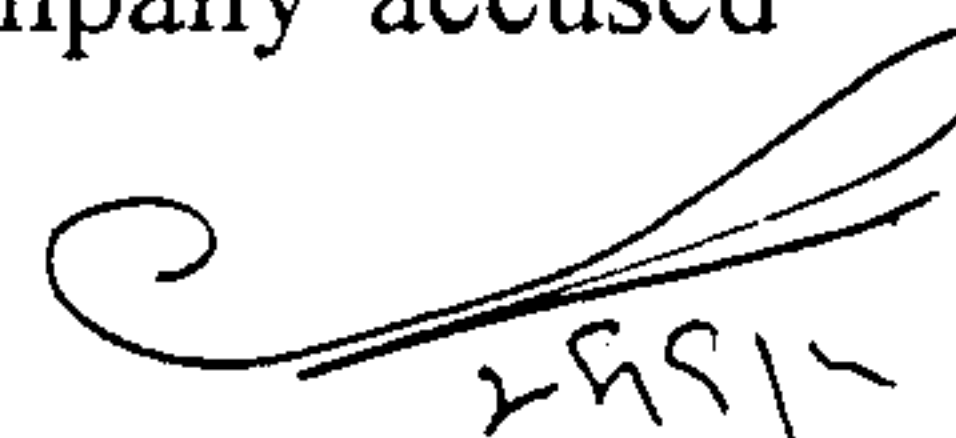
3. **Sh. R.S. Dixit**
S/o Sh. L.R. Dixit,
Director of accused no. 1
R/o 464, Nankari, IIT, Kanpur, U. P.

.....Convict no.3

Present: Sh. Sanjay Mann, Advocate, Counsel for SEBI
Sh. P.K.Malik, Advocate, Counsel for convict
No.2 & 3

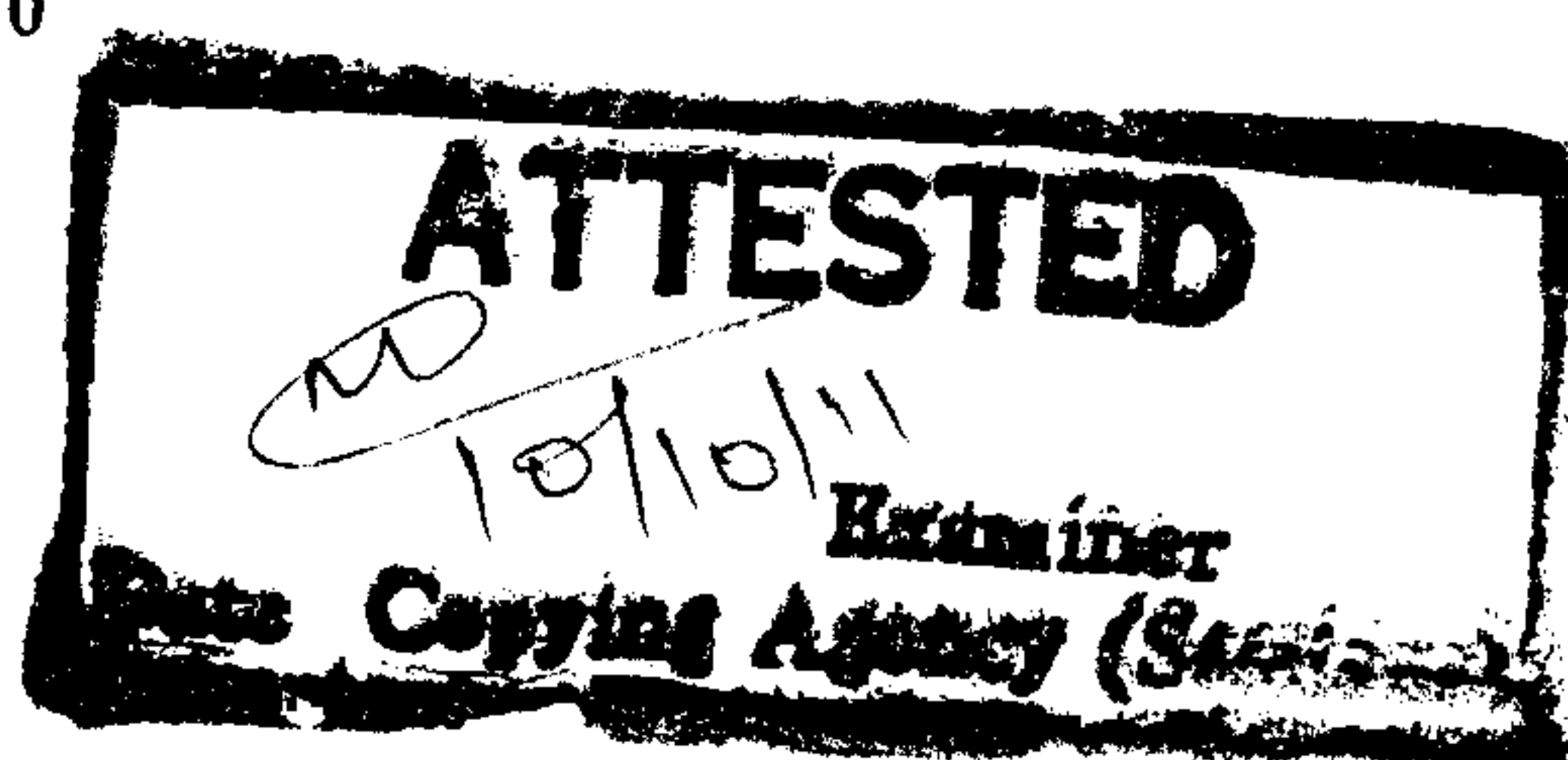
ORDER ON THE POINT OF SENTENCE

1. Vide separate judgment dated September 27, 2011, A1 i.e. Company accused Kudrat Agro Tech Ltd., A3 Sh. Manoj Saxena & A4 Sh. R.S. Dixit have been held guilty for the offence punishable under Section 24 (1) read with Section 27 of the SEBI Act.
2. Learned counsel appearing for convicts requested for a lenient view on the ground that convicts No. 2 & 3 are sole bread earner of their respective family having school going children and they are also looking after their old parents. It is further submitted that there is no criminal record against any of them. Learned counsel appearing for convicts further submitted that both the convicts had resigned from the directorship of company accused


25/11

CC No.25/2010

Page no. 2 of 4





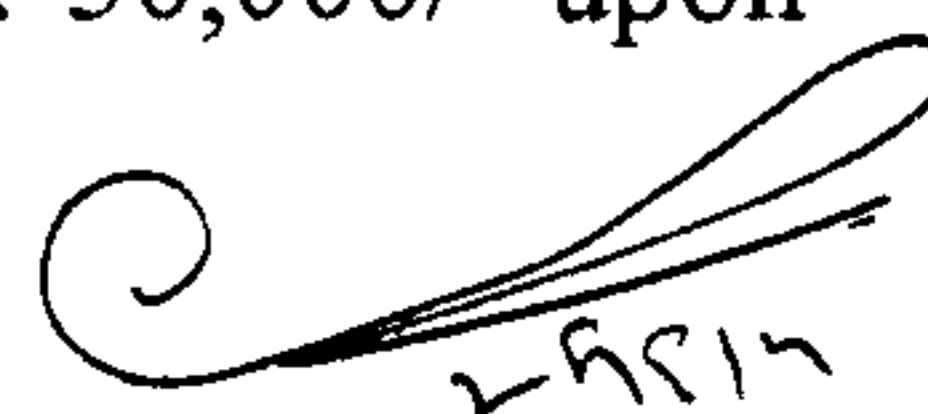
SEBI Vs. Kudrat Agro Tech Ltd. & ors.

on April 15, 1998 & February 10, 1999 respectively, thus they had no opportunity to comply with the provisions of CIS Regulations. On the other hand, learned counsel for complainant requests to award substantial punishment.

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

4. Though both the convicts were directors at the time when company accused (convict no.1) had mobilized funds through CIS and it is also established that both the convicts had resigned from the directorship of company accused (convict no.1) on April 15, 1998 & February 10, 1999.

5. Admittedly, if company accused had complied with the provisions of CIS Regulations, SEBI would not have prosecuted the company accused (convict no.1). In other words, convicts no. 2 & 3 had no opportunity to comply with the provisions of CIS Regulations as they had already resigned from directorship of company accused (convict no.1). In these circumstances, coupled with the submissions made by learned defence counsel, 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 ₹ 30,000/- upon



CC No.25/2010

Page no. 3 of 4





SEBI Vs. Kudrat Agro Tech Ltd. & ors.

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 is paid by convict no. 2 & 3. Convict no.1 is represented by none.
7. 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 28th day of September, 2011. (PAWAN KUMAR JAIN)
ADDITIONAL SESSIONS JUDGE-01
CENTRAL/THC/DELHI

*Copy given to the convicts
in open court at free*

*Copy received on behalf of
accused R.S. Dhillon &
Munoj Saxena
S.R. Dhillon
5/10/11*

05/10/11

Office of The District & Sessions Judge Delhi
Certified to be True Copy
<i>10/10/11</i> Examiner
Date. Copying Agency (Sessions)
Authorised under Section 78 of the Indian Evidence Act 1978