

Court of Sh. P. K. Jain
IN THE COURT OF CHIEF METROPOLITAN MAGISTRATE, TIS
HAZARI COURTS, DELHI.
CC NO: -----2003 *18/05*

125/18/03
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.

...COMPLAINANT

VERSUS

1. M/s. Mansarovar Plantations (India) Ltd.,
Having its Registered Office at
760/55, Raj Nagar, Palam,
New Delhi-110 045.

RZF 760/55, Raj Ngar,
Palam, New Delhi- 110 045.

Also at:
550, 3rd Floor,
Chirag Delhi,
New Delhi -110 017.

✓ 2. Shri Bal Mukund Singh,
(Director/Promoter)
✓ 5/951, R.K. Puram,
New Delhi -110 022.

✓ 3. Mrs. Shashikala, (Director) /Promoter.
✓ Sec. 5/1438, R.K. Puram,
New Delhi -110 022.

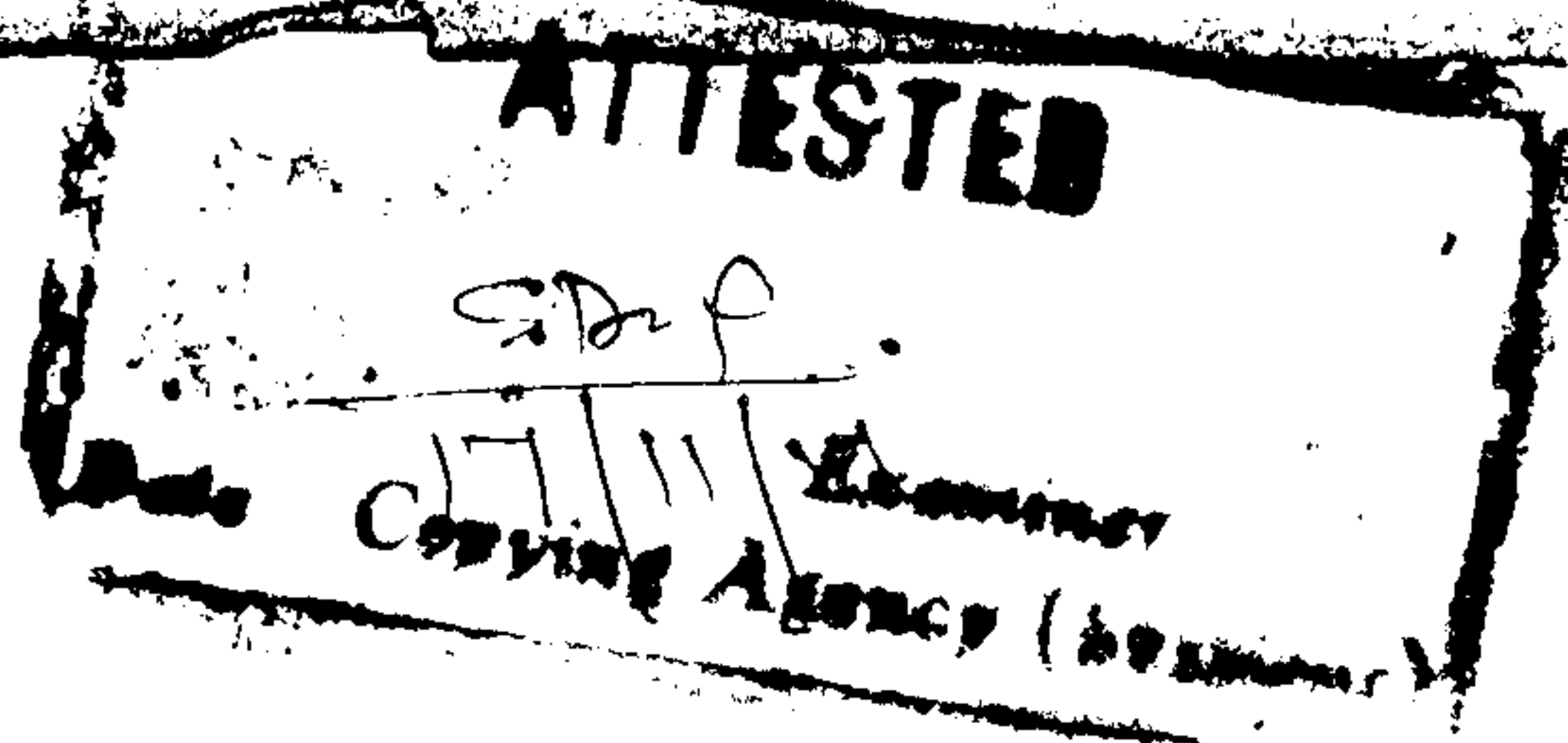
✓ 4. Ms. Basanti Rawat, (Director) /Promoter.
✓ Pocket B, 5/52g
Phase-III, Mayur Vihar, Delhi.

Present
F-6/31, Sector-15
Rohini, Delhi.

✓ 5. Sh. Daram Sachan, (Director) /Promoter.
✓ 527, Jhankar Gali,
Chirag Delhi,
New Delhi 110 017.

✓ 6. Mrs. Rekha Mishra, (Director).
✓ Sec. 5/574, R.K. Puram,
New Delhi- 110 022.

101
P.O. 7. Ms. Basanti Lata Rout, (Director) *x P.O. Order dt 17/5/06*





2

/Promoter.
276, Mohammed Pur,
Govt. Colony, New Delhi.

8. Sh. Suresh Chandra,
(Promoter/Director),
F-1/157, Sangam Vihar,
New Delhi-110 062.

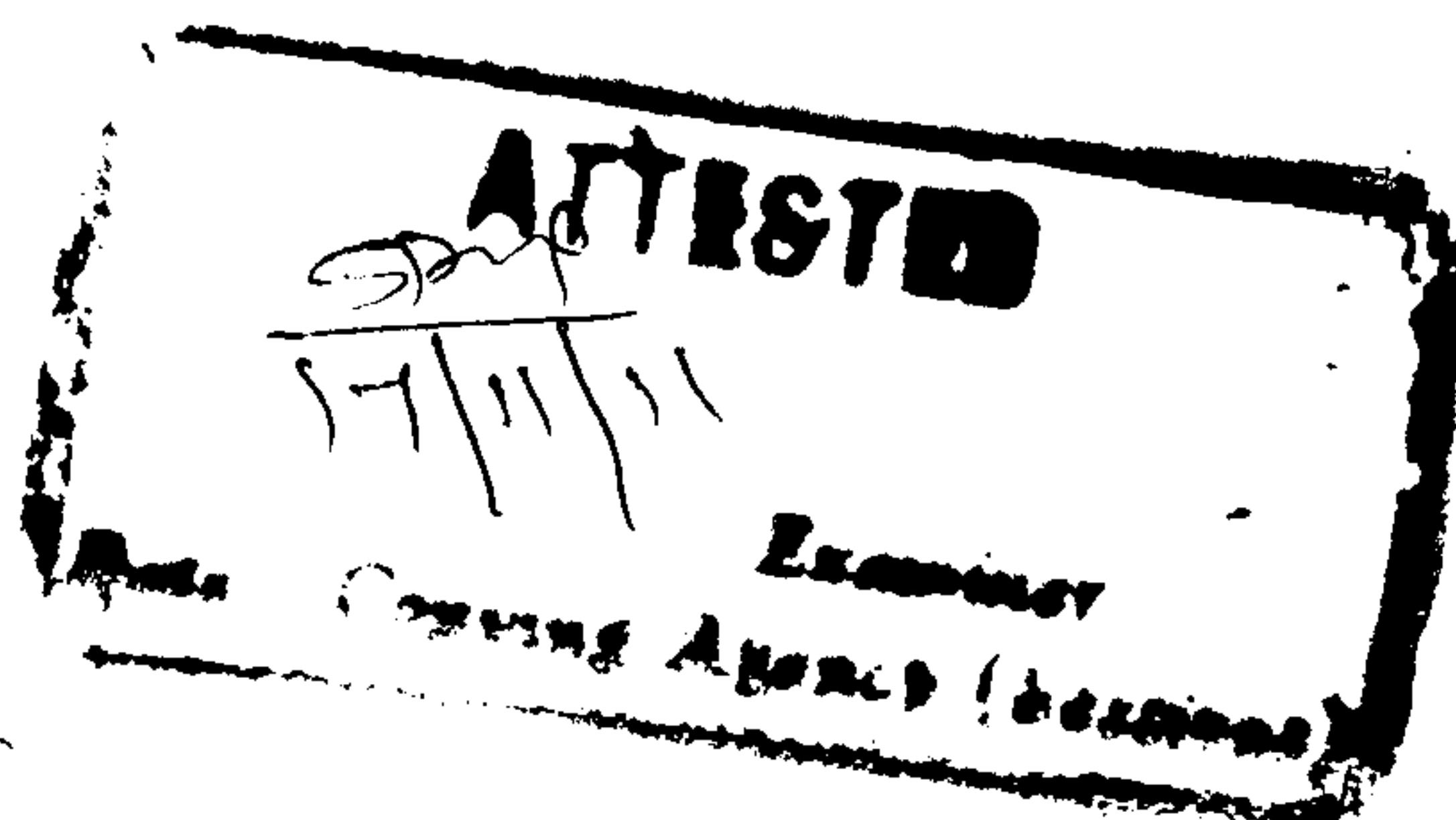
9. Sh. Layak Ram. Goswami, (
(Promoter/Director),
B-75, Sangam Vihar,
New Delhi.

10. Sh. Mahendra Singh,
(Promoter/Director),
G-9/136, Ratia Marg,
Sangam Vihar, New Delhi.

.....ACCUSED

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:





Item No. 10

CC No. 32/10

09.11.2011

Present: Sh. Sanjay Mann with Sh. R. K. Pillai, Advocate for SEBI.
Accused No. 1 is company represented by accused no.2
who is in person with counsel Sh. P.K. Jha, Advocate.
Accused no. 6 in person with counsel Sh. Vishvender
Verma, Advocate.
Accused no. 7 is PO vide order dated 12.05.2006.
Other accused are in person with counsel Sh. A.K. Das,
Advocate.

Further arguments heard.

Vide separate judgment, accused no. 1,2,3 and 5 are held guilty for
the offence punishable under Section 24(1) read with Section 27 of the SEBI Act.
Other accused persons are acquitted from all charges. Their bail bond and
surety bond stands cancelled. Sureties stand discharged. Endorsement, if any,
stands cancelled.

Accused no. 7 is acquitted in her absence since she is PO.

Arguments heard on the point of sentence.

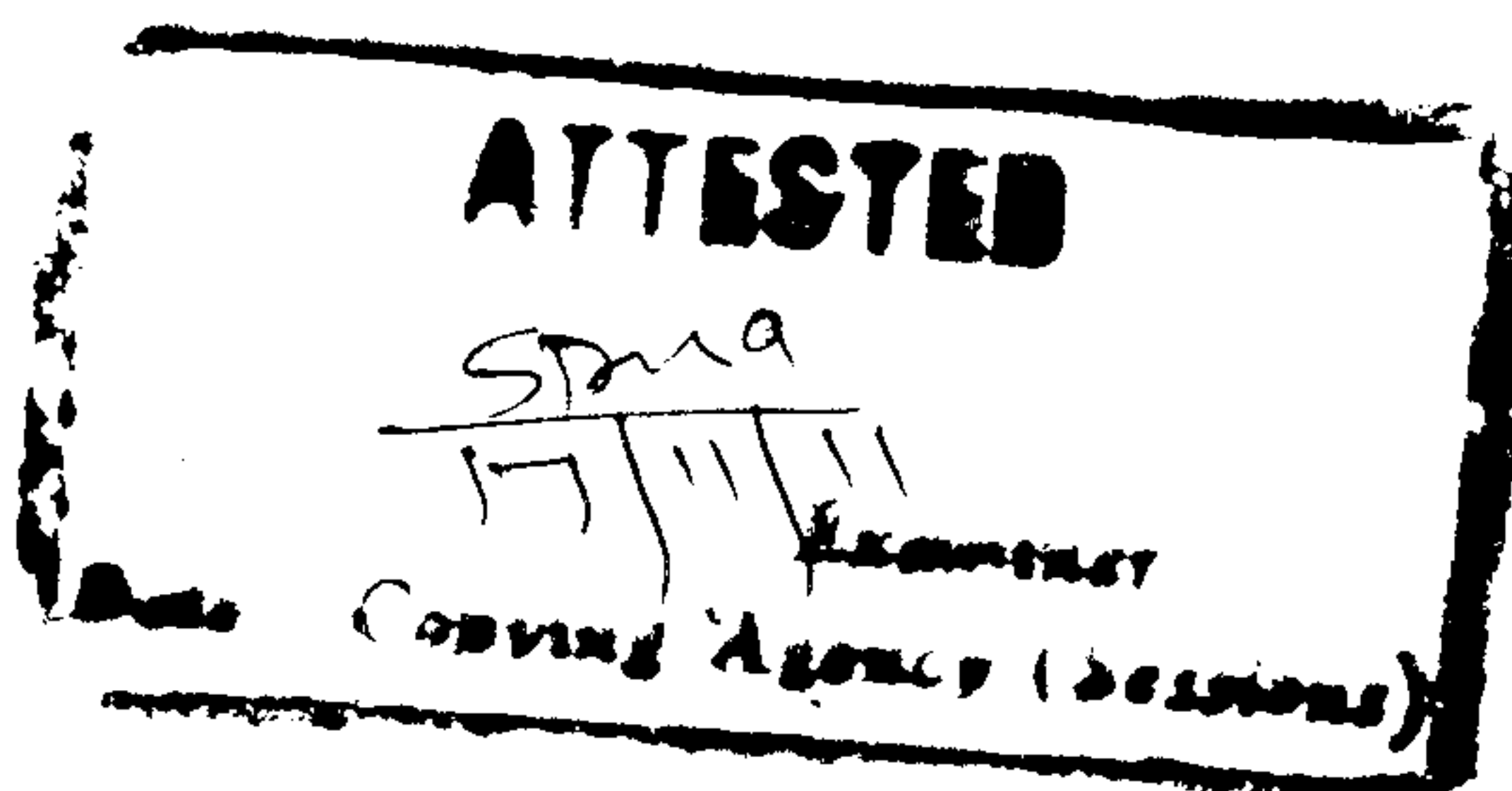
Vide separate order, convicts are burdened with the fine of ₹
1,60,000/- each in default convicts no. 2 to 4 shall undergo simple imprisonment
for a period of three months for the offence punishable under Section 24(1) of the
SEBI Act.

Fine paid.

Copy of the judgment along with 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]
ASJ-01/CENTRAL/DELHI
09.11.2011



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

Complaint Case No. 32 of 2010
ID No: 02401R0303312003

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 Legal Officer, Asstt. General Manager, Ms. Jyoti Jindgar.

Versus

1. **M/S Mansarovar Plantations (India) Ltd.**
Having its Registered Office at
760/55, Raj Nagar, Palam, New Delhi-45

RZF 760/55, Raj Nagar,
Palam, New Delhi-45

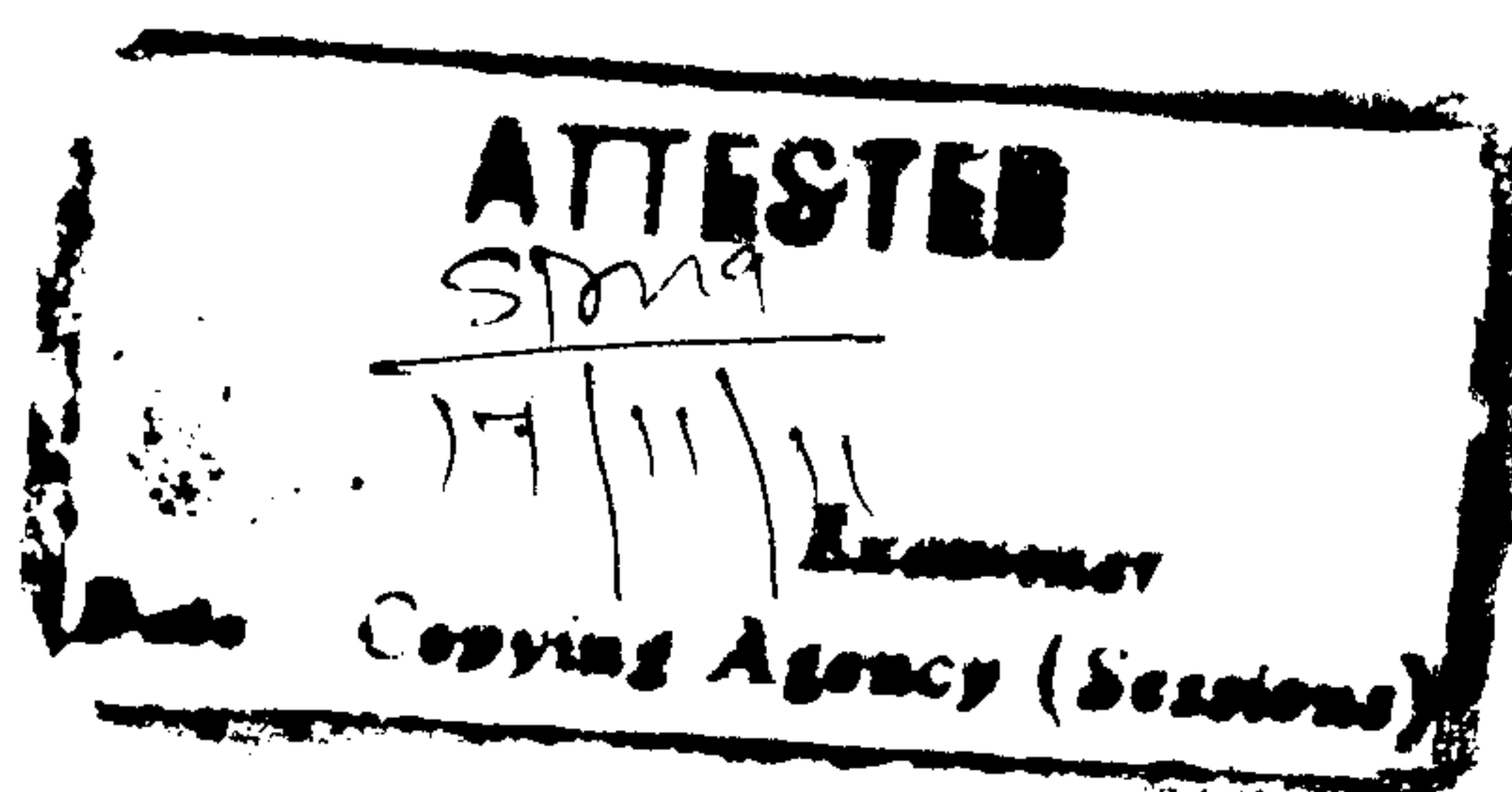
Also at:
550, 3rd floor, Chirag Delhi,
New Delhi.

.....Accused no.1

2. **Sh. Bal Mukund Singh**
(Director/Promoter)
5/951, R.K. Puram,
New Delhi

.....Accused no.2


9/11/11





SEBI Vs. MANSAROVER PLANTATION & OTHERS

3. **Mrs. Shashikala,**
(Director/Promoter)
Sec. 5/1438, R. K. Puram,
New Delhi

.....Accused no.3

4. **Ms. Basanti Rawat,**
(Director/Promoter)
Pocket B, 5/52g Phase-III,
Mayur Vihar, Delhi

.....Accused no.4

5. **Sh. Daram Sachan,**
(Director/Promoter)
527, Jhankar Gali,
Chirag Delhi,
New Delhi.

.....Accused no.5

6. **Mrs. Rekha Mishra,**
(Director)
Sec. 5/574, R.K.Puram,
New Delhi-110 022.

.....Accused no.6

7. **Ms. Basanti Lata Routi,**
(Director/Promoter)
276, Mohammed Pur,
Govt. Colony, New Delhi.

.....Accused no.7

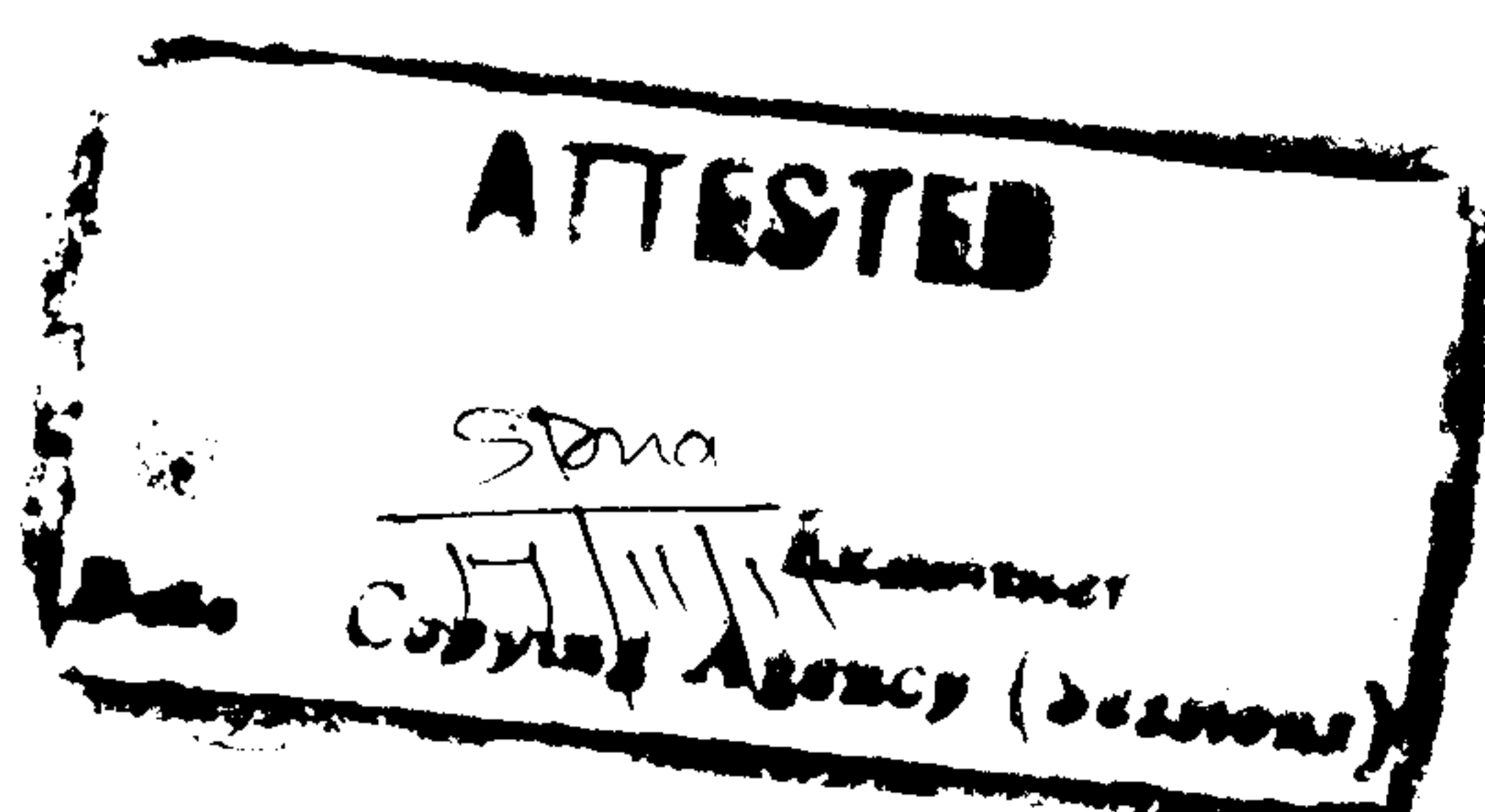
8. **Sh. Suresh Chandra,**
(Director/Promoter)
F-1/157, Sangam Vihar,
New Delhi-62

.....Accused no.8

9. **Sh. Layak Ram Goswami,**
(Director/Promoter)
B-75, Sangam Vihar,
New Delhi

.....Accused no.9

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8/11/12



10. **Sh. Mahendra Singh,**
(Director/Promoter)
G-9/136, Ratia Marg,
Sangam Vihar, New Delhi.

.....Accused no.10

Date of Institution : 15.12.2003

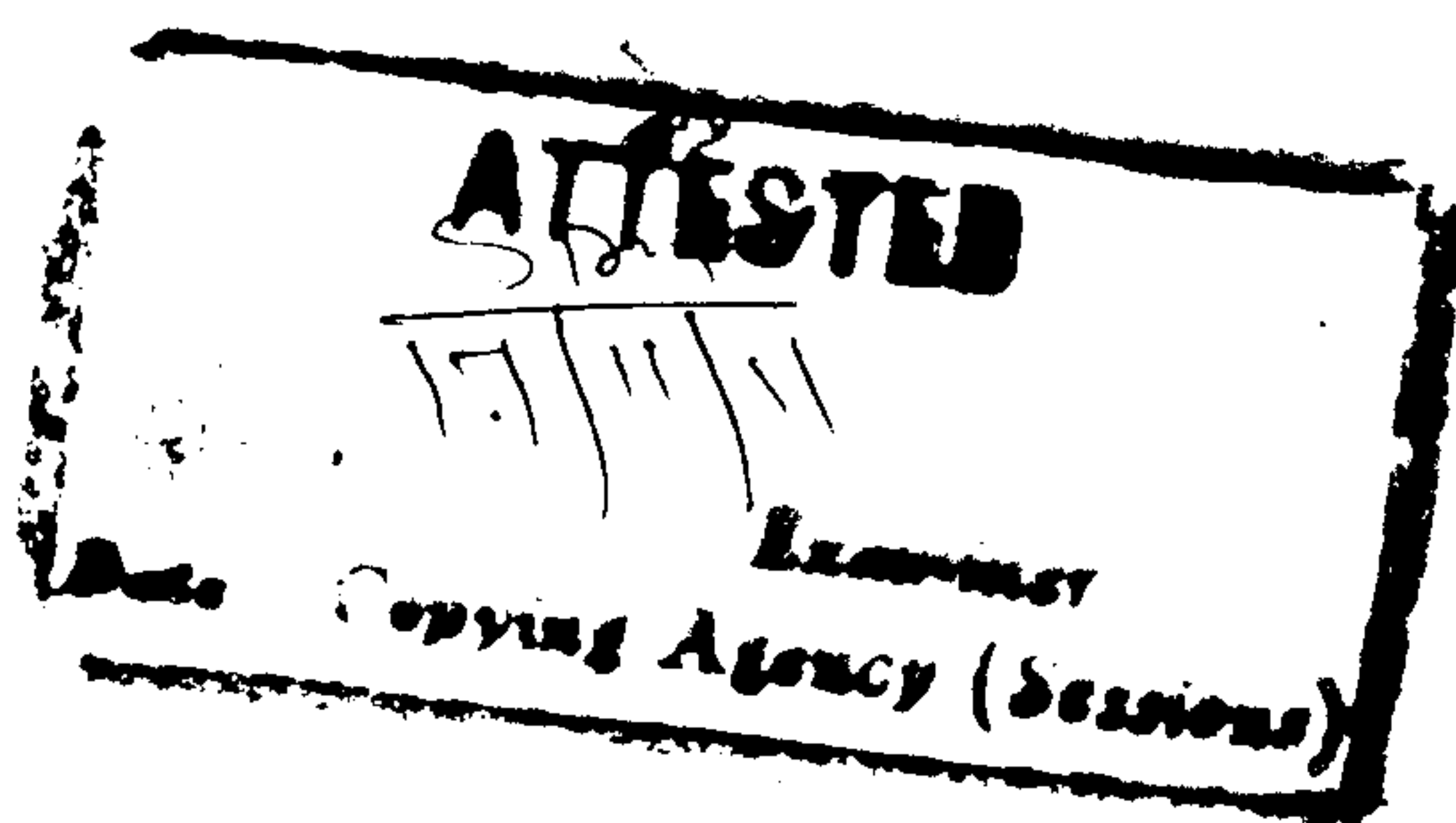
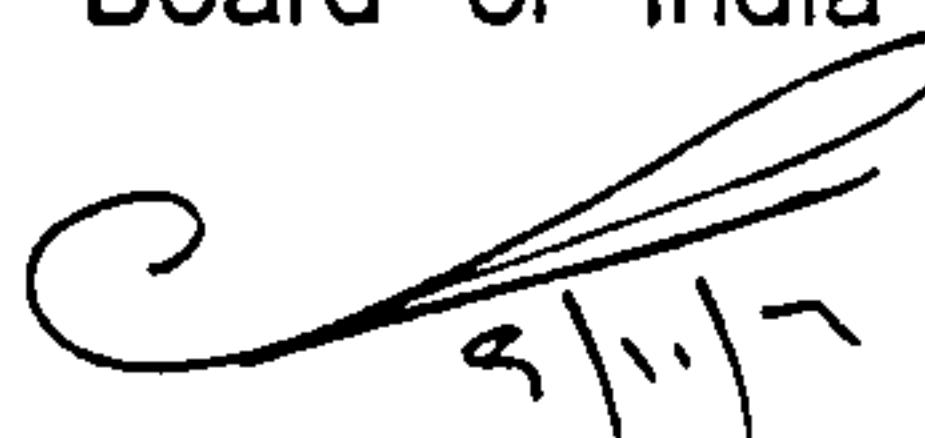
Date of committal to Session Court : 11.01.2005

Date of pronouncement of judgment : 09.11.2011

Present: Sh. Sanjay Man, Advocate, Counsel for SEBI
Sh. P.K.Jha, Advocate, Counsel for accused
No. 1 & 2
Sh. Vishvender Verma, Advocate, Counsel for
accused no. 6
Sh. A.K. Dass, Advocate, Counsel for other accused
persons except A7

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

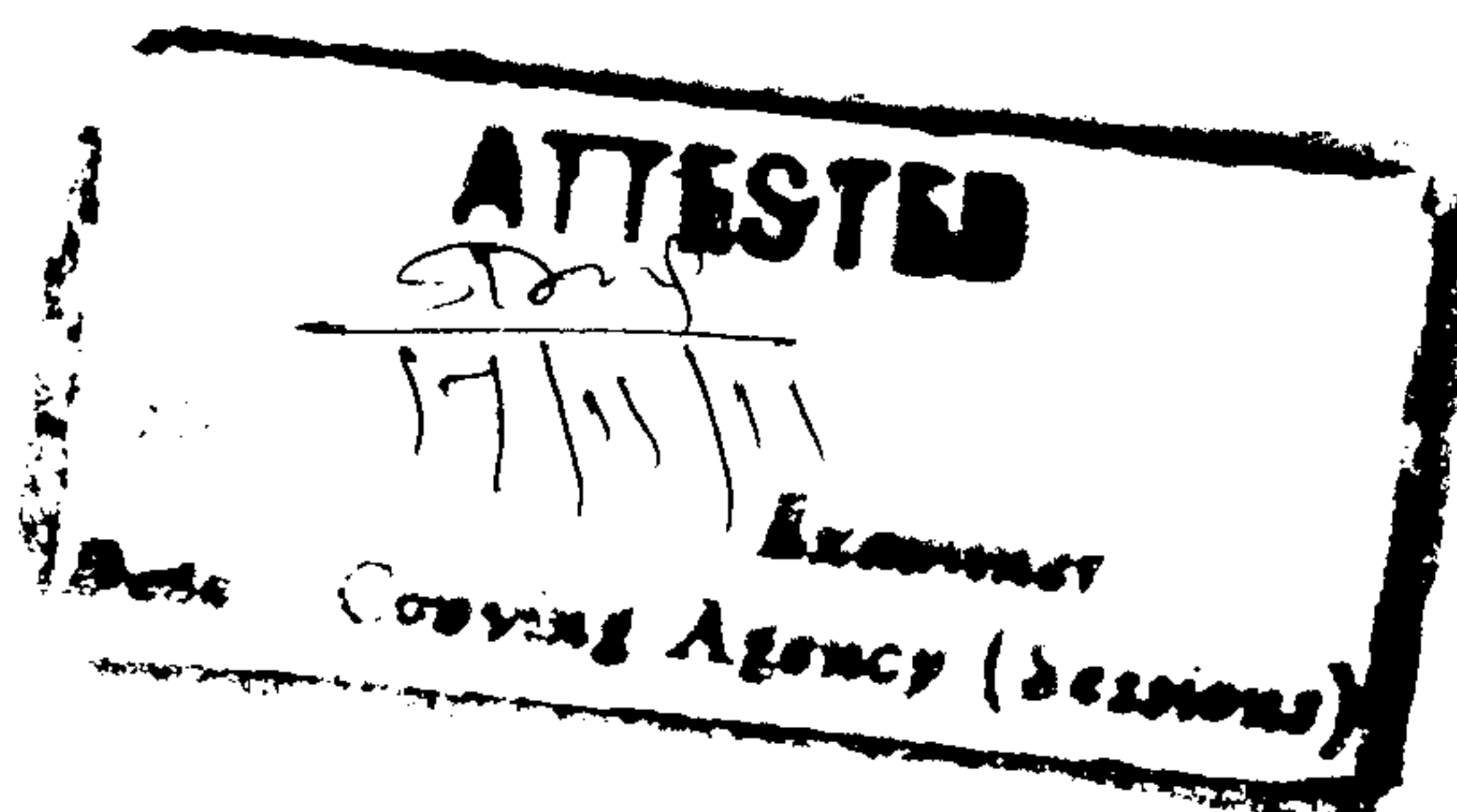


(Collective Investment Schemes) Regulations, 1999 (hereinafter referred to as "the CIS Regulations" or "the said Regulations"), constituting offence punishable under Section 24(1) read with Section 27 of the SEBI Act.

2. Ten persons were arrayed as accused in the criminal complaint preferred under Section 200 Cr.P.C., they being M/s Mansarovar Plantations (India) Ltd. ("A1"), accused No. 2 Sh. Bal Mukund Singh ("A2"), accused No. 3 Mrs. Shashikala ("A3"), accused No.4 Ms. Basanti Rawat ("A4"), accused No. 5 Sh. Daram Sachan ("A5"), accused No. 6 Mrs. Rekha Mishra ("A6"), accused No. 7 Ms. Basanti Lal Rout ("A7"), accused No. 8 Sh. Suresh Chandra ("A8"), accused No.9 Sh. Layak Ram Goswami ("A9") and accused No. 10 Sh. Mahendra Singh("A10"). It is alleged that A2 to A10 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.

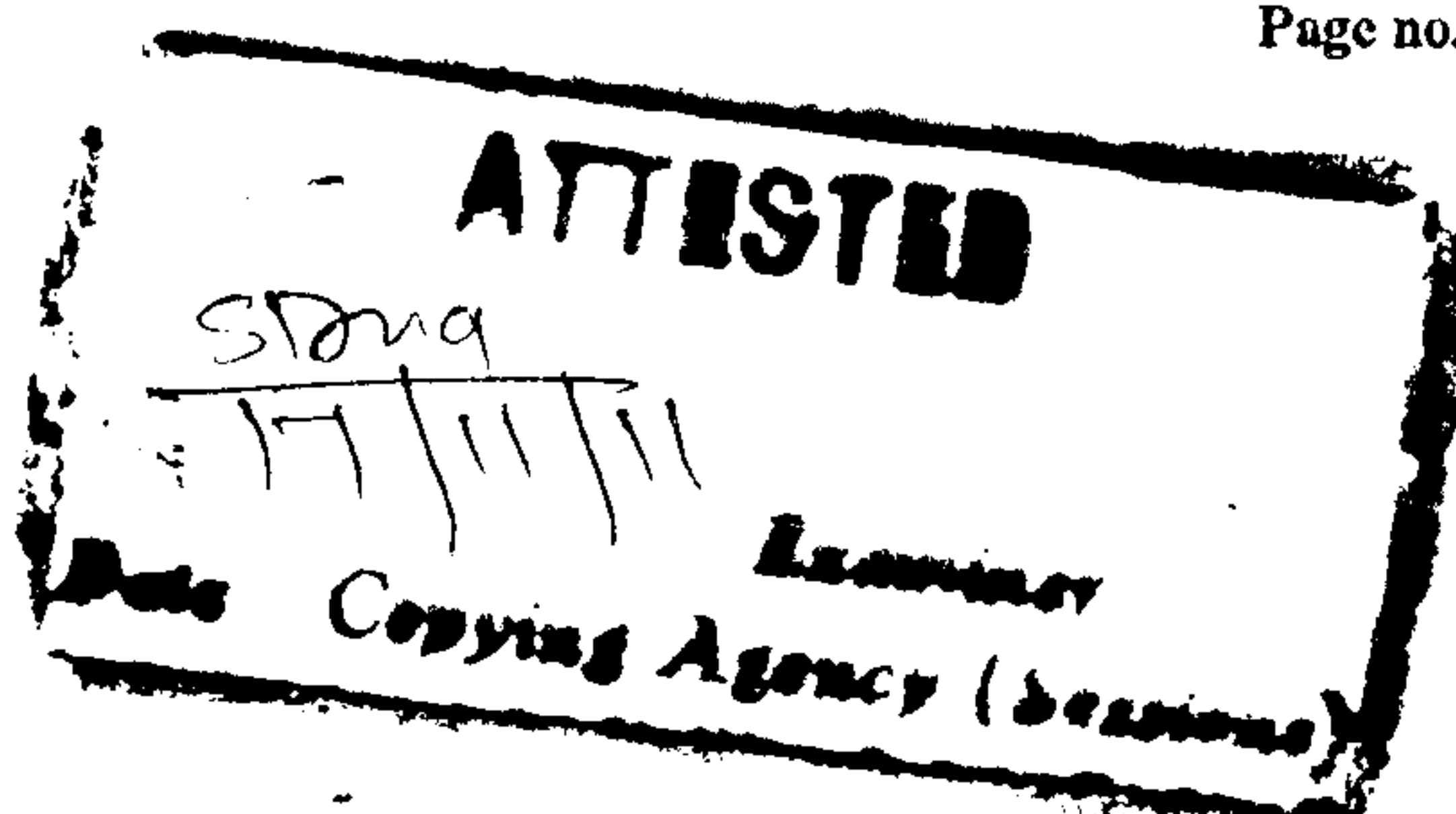
3. It is alleged in the complaint that A1 had floated various Collective Investment Scheme (CIS) and raised approximate ₹ 16,30,000/- from general public, in violation of the provisions contained in Section 12 (1B) of the SEBI Act. It is also alleged that after coming into force of CIS Regulations and in spite of public notice dated December 18, 1997, the accused persons had failed to get the Collective Investment Schemes registered with SEBI or to wind up the said schemes 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

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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 Hon'ble High Court, under orders of the Ld. Distt. & Sessions Judge, this case was transferred on January 11, 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 May 12, 2006, A7 was declared proclaimed offender on account of non-appearance. Thereafter, vide order dated March 3, 2006, a notice for the offence punishable under Section 24 read with section 27 of the SEBI Act was served upon the A1 to A10 except A7, who was declared proclaimed offender wherein all accused pleaded not guilty and claimed trial.
7. **To** prove its case, complainant has examined only one witness named Ms. Jyoti Jindgar, Dy. General Manager, SEBI. Thereafter, A1 to A10 except A7 were examined under Section 313 Cr.P.C. A3 & A5 took plea in their statement recorded under Section 313 Cr.P.C. that they were sleeping director in the company accused and had resigned from the directorship on January 19, 1999 and May 14, 1999 respectively. It was stated that they were not involved in the day to





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day affairs of the company. A2 in his statement recorded under Section 313 Cr.P.C. took the plea that he was innocent as all the work was being looked after by Brijesh Ghidayal who had already died and was not aware about the correspondence made with the SEBI. He further stated that all the amount had already been refunded to the investors. Remaining accused i.e. A4, A6 to A10 took the plea that they were not the directors of the accused company. Nor they participated in the affairs of the company accused. It was stated that they were merely subscribers in the company accused.

8. To prove their innocence, accused examined Sh. Data Ram, Sr. Technical Asstt. as DW1, Sh. Bal Mukund Singh (A2) as DW2, Ms. Shashi Kalan (A3) as DW3 and Sh. Dharam Singh (A5) as DW4.
9. I have heard arguments advanced by Sh. Sanjay Mann, Advocate, Counsel for complainant and Sh. P.K. Jha, Sh. Vishvender Verma and Sh. A. K. Dass, Counsels for accused persons, perused the record carefully.
10. Learned defence counsel appearing for A4, A6, A8, A9 & A10 submits that there is no evidence to show that the above accused persons were in charge of, and responsible to, the company accused for the conduct of its business, thus it was contented that they are not liable for the alleged violation committed by the company accused. Counsel appearing for A1 to A3 & A5 submits that though A1 to A3 & A5, being the directors of company accused, were in charge of, and responsible to, the company accused for the conduct of its business at

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the relevant time when company accused had mobilized the funds, yet they are not liable for any violation as company accused had not committed any violation of provisions of SEBI Act. On the other hand, counsel appearing for complainant contended that there are sufficient evidence on record to prove that company accused had committed violation of the provisions of SEBI Act at the time of mobilizing funds. It was further stated that being the directors of the company accused, A2, A3 & A5 are also liable for the said violations with the aid of Section 27 of the SEBI Act.

11. **Before** dealing with the above contentions, I deem it appropriate to decide whether company accused had violated any provisions of SEBI Act or not.

12. **Admittedly**, company accused was incorporated on December 11, 1996. Moreover, this fact is proved from the Memorandum and Articles of Associations of company accused, which is exhibited as Ex. CW1/A6. It is also admitted case of the company accused that company accused had sent a letter dated January 14, 1998 to the SEBI which is exhibited as CW1/1 and furnished certain information. According to the said letter, company accused had mobilized ₹16,25,000/- through various plantation schemes till November 30, 1997. Vide its letter dated April 29, 1998, which is exhibited as Ex. CW1/2, company accused had submitted a compliance certificate undertaking 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 schemes unless company obtained rating for the existence schemes.


5/1/7





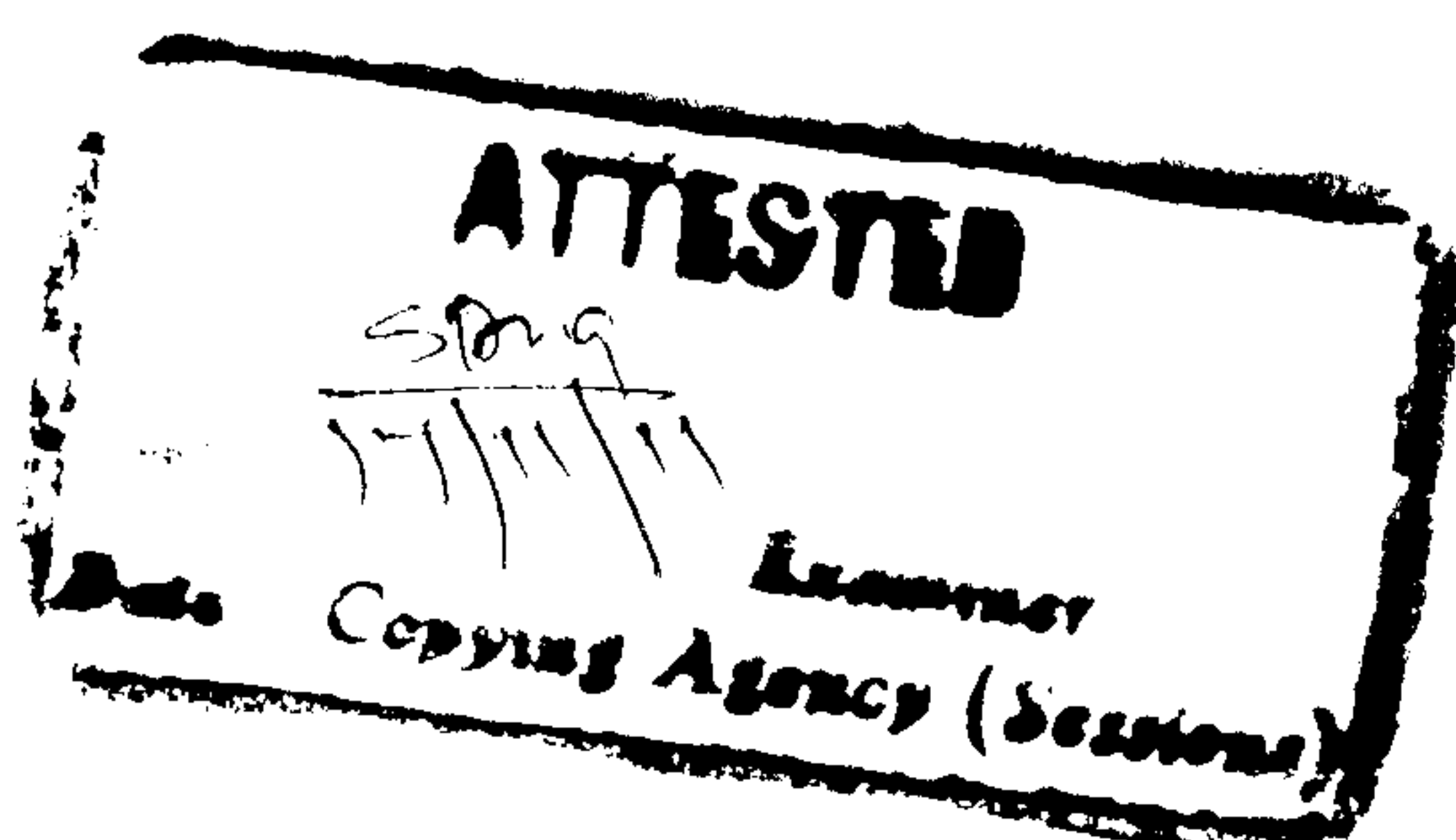
SEBI Vs. MANSAROVER PLANTATION & OTHERS

13. **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 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.

14. **Now** 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 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 Section 12(1B) permitted only those persons who were carrying on the business of collective investment scheme prior to the

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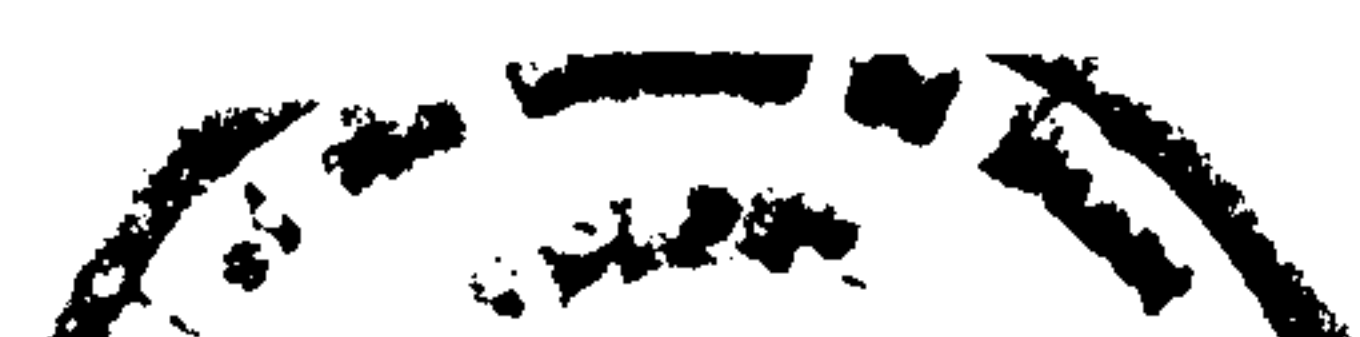
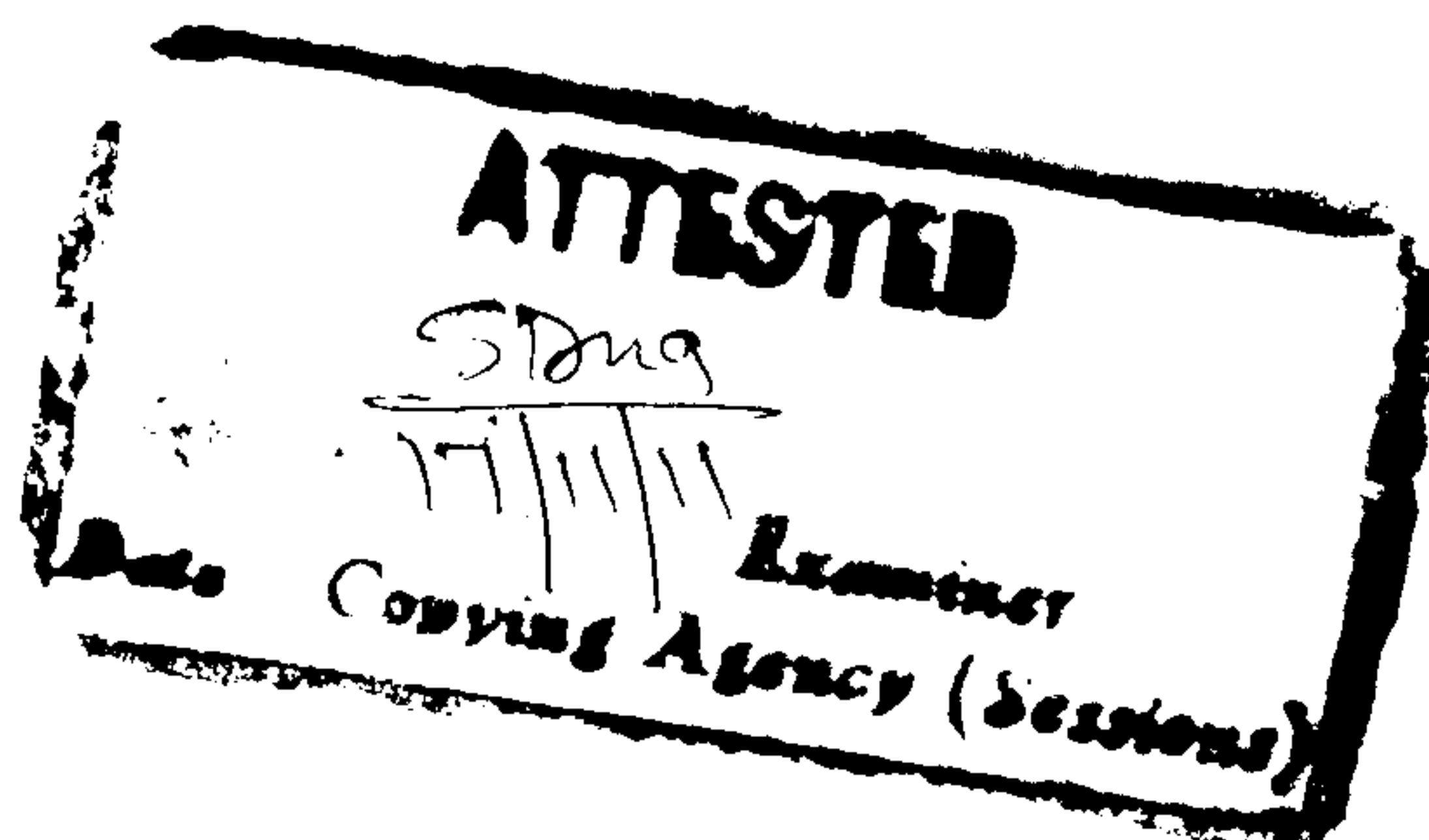


SEBI V. MANSAROVER PLANTATION & OTHERS

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

15. 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 1996-97 without obtaining the certificate of registration which is in violation of Section

9/11/00



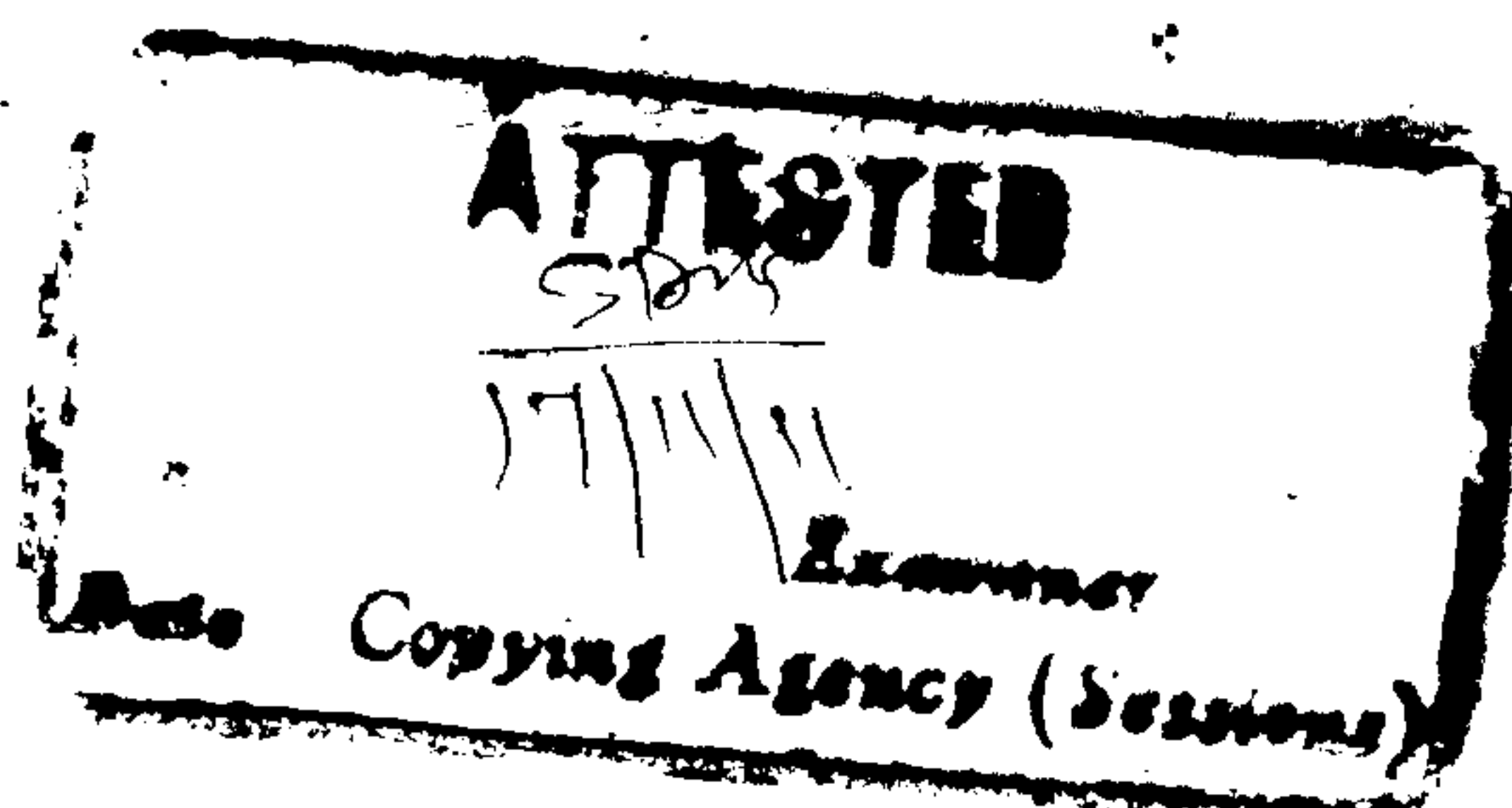


SEBI v. MANSAROVER PLANTATION & OTHERS

18. Now coming to the contention raised by the learned counsel appearing for accused persons whether A2, 3 & A5 that they are not liable for the violation committed by company accused.

19. Vide Ex. CW1/1, company accused had also furnished the names and other details of the directors of the company accused which proves that A2, A3 & A5 were directors of company accused at the relevant time. Even their name is also mentioned as first directors in the Memorandum and Articles of Associations of the company accused, which is exhibited as Ex. CW1/A6. Again company accused had sent a letter dated April 29, 1998 to the SEBI, which is exhibited as Ex. CW1/2 and in the said letter also, the name of above accused persons are mentioned as directors of the company accused. Again their name is also mentioned in Form-32 which is exhibited as CW1/DA. Moreover, CW1 has deposed that above accused persons, being the directors of company accused were in charge of, and responsible to, the company accused for the conduct of its business. Though the above accused persons during the trial, took the plea that they were not in charge of, and responsible to, the company accused and they had never participated in the affairs of the company accused, yet during the course of arguments, learned counsel appearing for accused persons did not press for the same. DW2 Sh. Bal Mukund (A2) deposed that the company accused was being running by Mr. Brijesh Ghidayal who died on May 5, 2006. However, he had admitted in his deposition that he was one of the directors in the company accused and he had not made any attempt to return the money to the investors or to comply with the provisions of the SEBI Act. He further deposed that company accused had refunded all the amounts to the

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investors but he states that he did not know how much money was mobilized by the company accused from the general public and also did not know how much money was repaid to the investors. There is nothing on record which may suggests that above accused (A2, A3 & A5) had taken any step to prevent the company accused to mobilize funds in violation of SEBI Act. Since A2, A3 & A5 were directors of the company accused at the time when company accused had mobilized funds under various CIS, being the directors, it was their duty to ensure that company accused had mobilized funds in accordance with the provisions of law and had not violated any provisions of SEBI Act but they failed to take any such step. Except their bald statement, accused persons failed to produce any evidence to show that they were not indulging in the affairs of the company accused. In the absence of any cogent evidence, their testimony to that extent that they were not dealing with the affairs of the company accused does not inspire any confidence.

20. A3 has placed her resignation letter dated January 19, 1999, which is exhibited as Ex. DW3/A. Perusal of the said letter, reveals that she had resigned from the company accused at the instance of her husband. Even in her letter, it was no where mentioned that she was not looking after the affairs of the company accused. However, this proves that she was one of the directors in the company accused till January 19, 1999. In other words, she was one of the directors at the time when company accused had mobilized funds in violation of provisions of SEBI Act. Similarly, A5 relied upon his resignation letter dated May 14, 1999 which is Ex. DW4/A wherein he stated that due to his other activities, he was unable to devote much time to the company

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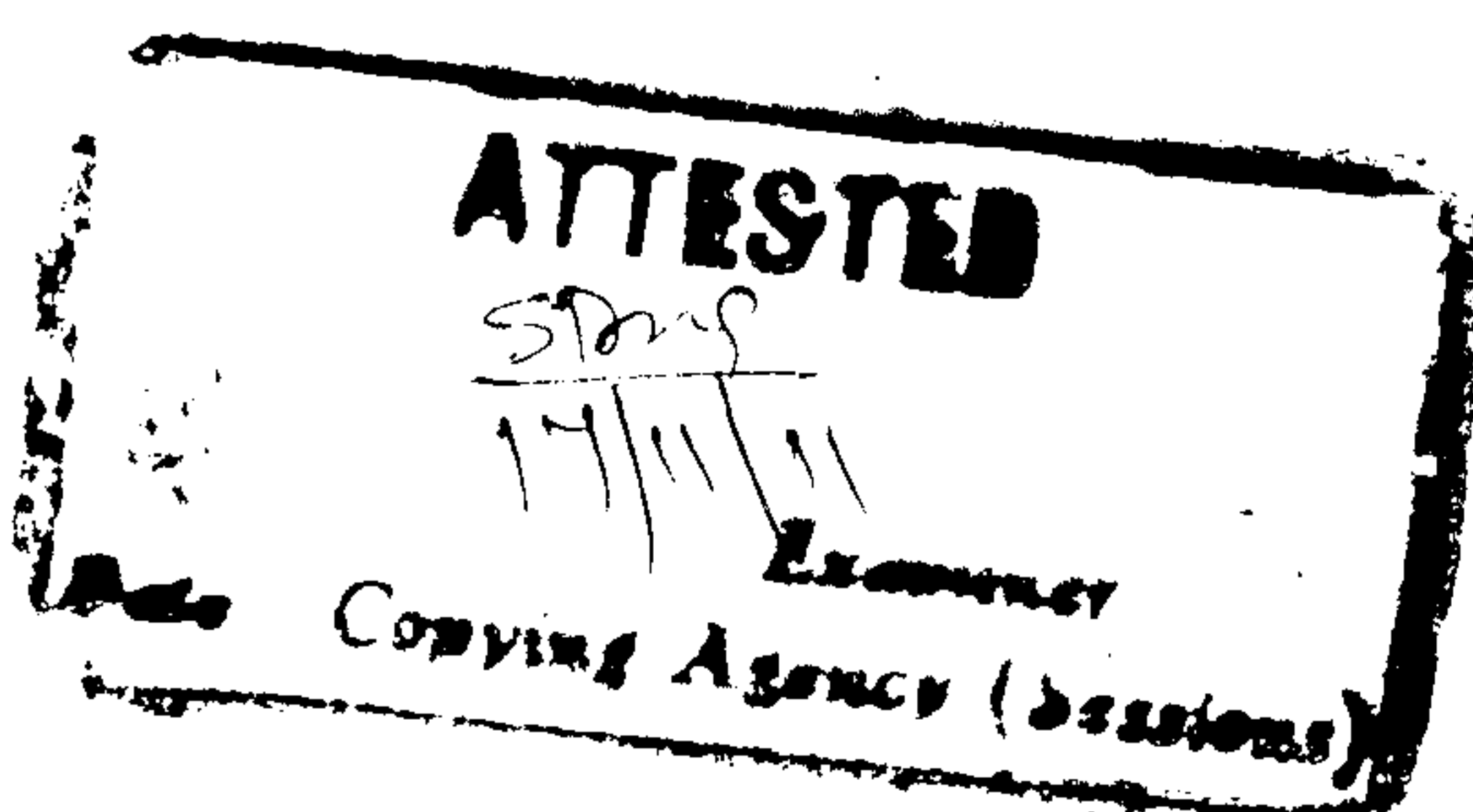
as a director. This proves that earlier he was actively involved in the affairs of company accused but subsequently when he failed to devote much time to company, he resigned from the company accused. Moreover, during the course of arguments, learned counsel fairly conceded that A2, A3 & A5 were being the directors were in charge of, and responsible to, the company accused for the conduct of its business.

21. In view of above discussion, I am of the view that being the directors, A2, A3 & A5 were in charge of, and responsible to, the company accused for the conduct of its business, thus they are also liable for the violation committed by company accused in terms of Section 27 of the SEBI Act.

22. Learned counsel appearing for complainant fairly conceded that the other accused persons were only promoters/subscribers of the company accused and they were not in charge of, and responsible to, the company accused for the conduct of its business, thus they are not liable for any violation committed by the company accused.

23. Perusal of Memorandum and Articles of Associations of company accused corroborates the said contention wherein their name are mentioned as merely subscriber/promoters. As per the Memorandum and Articles of Associations of company accused, only A2, A3 and A5 were the directors of company accused. Since there is no evidence to show that A4, A6 to A10 were in charge of, and responsible to, the company accused for the conduct of its business, thus I am of the view that they are not vicariously liable for the violation

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committed by company accused.

24. **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 CIS Regulations. Complainant has also established that A2, A3 & 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 they are also liable for the said violation in terms of Section 27 of the Act. Thus, I hereby hold A1 i.e M/S Mansarovar Plantations (India) Ltd, A2 Sh. Bal Mukund Singh, A3 Mrs. Shashikala and A5 Sh. Daram Sachan, guilty for the offence punishable under Section 24 (1) read with section 27 of the SEBI Act.

25. **However** complainant has failed to establish beyond the shadow of all reasonable doubts that other 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 acquit A4 & A6 to A10 from all the charges.

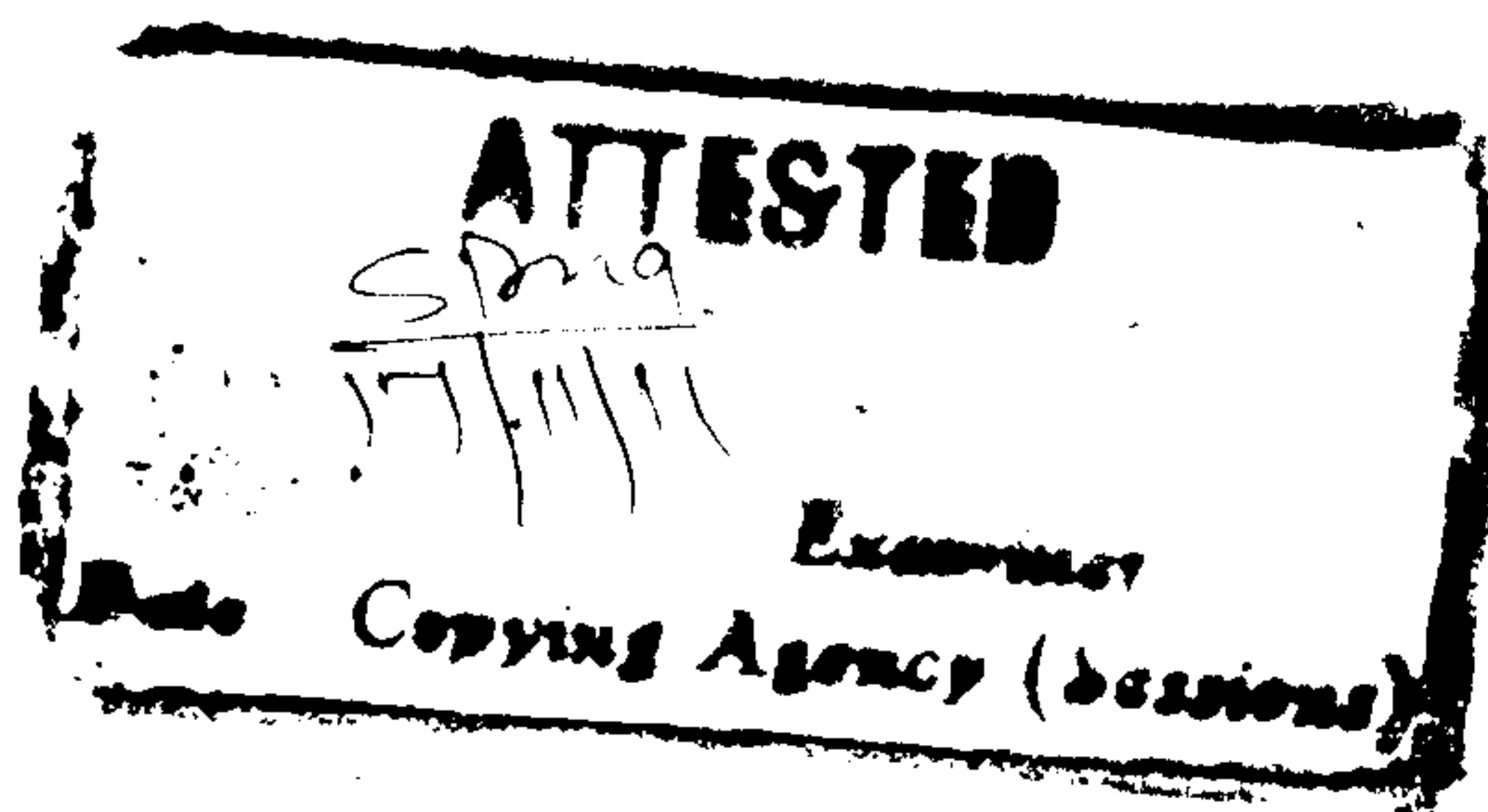
26. **Since** A7 Ms. Basanti Lata Routi, is proclaimed offender, she is acquitted in her absentia.

Announced in the open Court.
On this 9th day of November 2011

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

CC No. 32/10

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Copy given to Comptroller
the Court at Sec on
14/11/11
17/11/11

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

**Complaint Case No. 32 of 2010
ID No: 02401R0303312003**

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 Legal Officer, Asstt. General Manager, Ms. Jyoti Jindgar.

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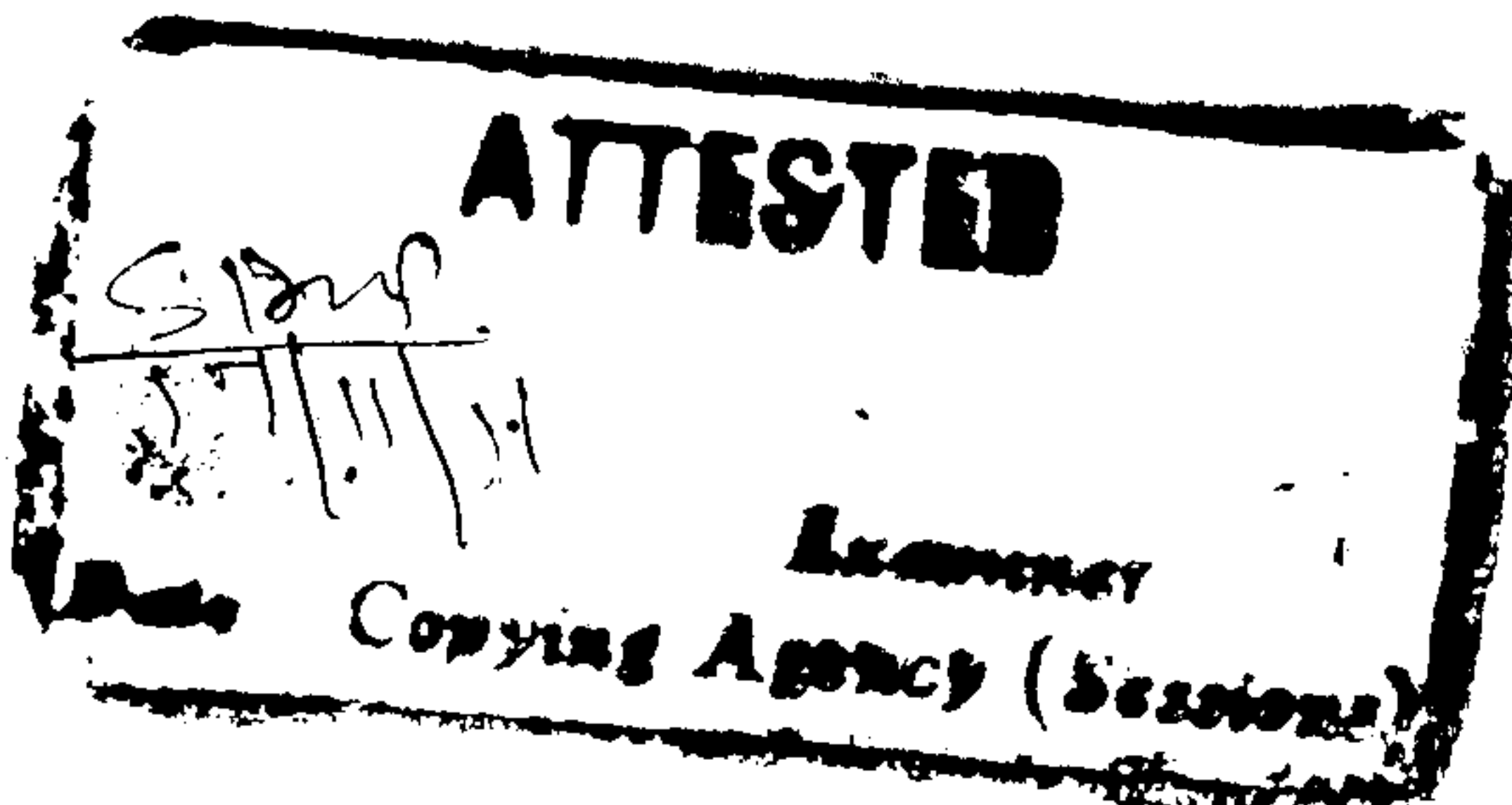
.....Convict no.1

2. **Sh. Bal Mukund Singh**
(Director/Promoter)
5/951, R.K. Puram,
New Delhi

..... Convict no.2

3. **Mrs. Shashikala,**





(Director/Promoter)
Sec. 5/1438, R. K. Puram,
New Delhi

.....Convict no.3

5. **Sh. Daram Sachan,**
(Director/Promoter)
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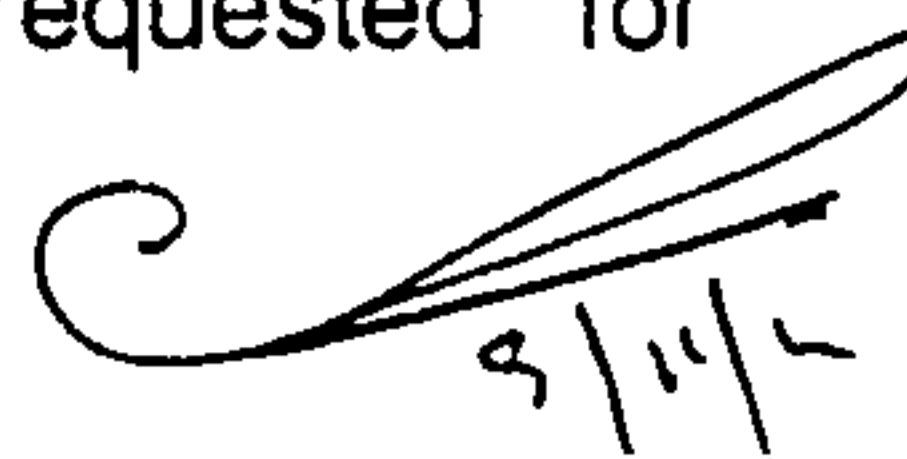
.....Accused no.4

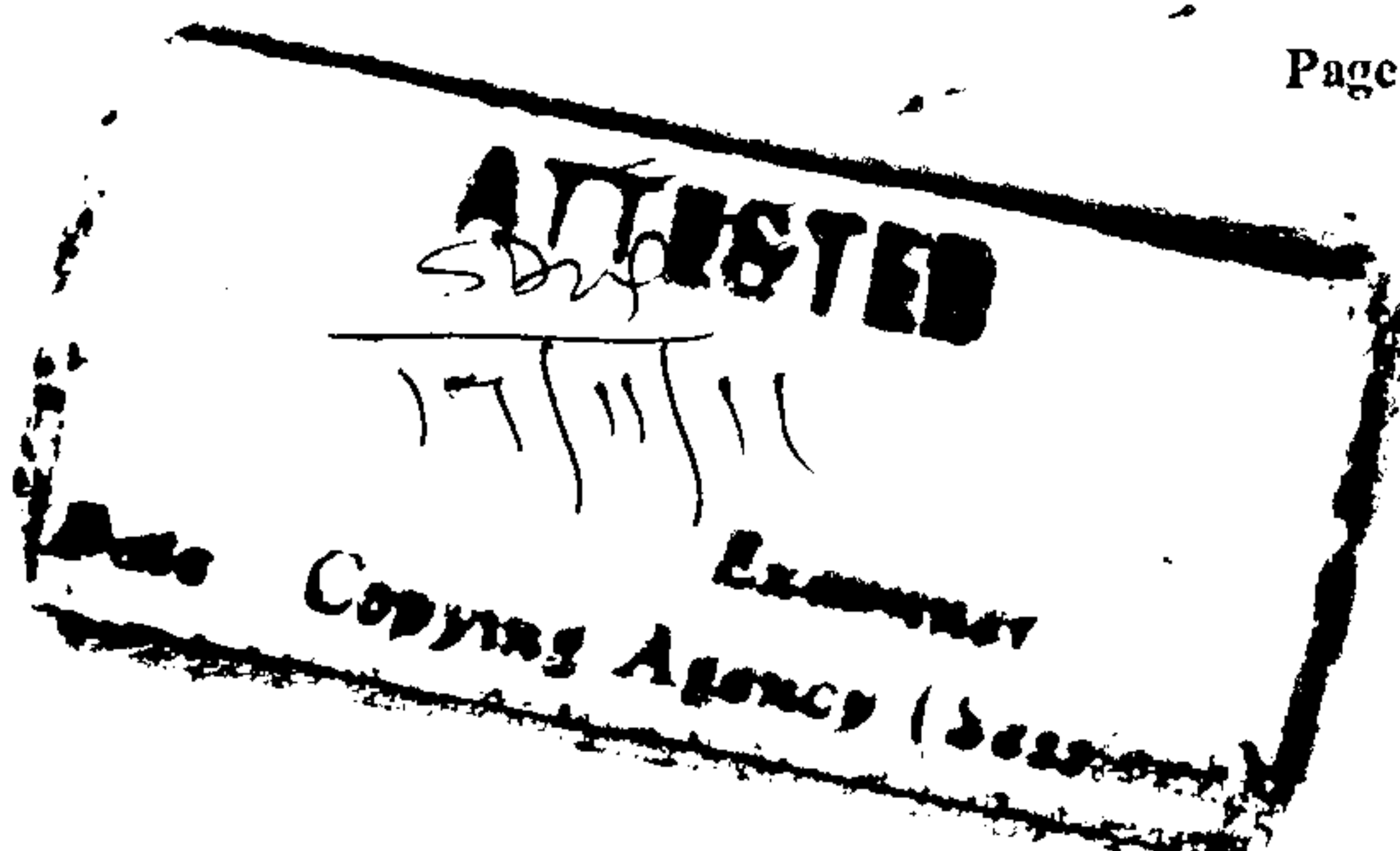
Present: Sh. Sanjay Man, Advocate, Counsel for SEBI
Sh. P.K.Jha, Advocate, Counsel for convict
No. 1 & 2
Sh. A.K. Dass, Advocate, Counsel for convict no. 3 &
4

ORDER ON THE POINT OF SENTENCE (ORAL):

1. **Vide** separate judgment dated November 9, 2011, A1 i.e. Company accused M/S Mansarovar Plantations (India) Ltd., A2 Sh. Bal Mukund Singh, A3 Mrs. Shashikala and A5 Sh. Daram Sachan, have been held guilty for the offence punishable under Section 24 (1) read with Section 27 of the SEBI Act.

2. **Learned** counsels appearing for convicts requested for a lenient view on the ground that there is no criminal record against convict no. 2 to 4 and further submit that convicts are the sole bread earner of their respective families and submit that no complaint of any investors is pending with the SEBI. It was stated that company accused had refunded the amount to all the investors. On the other hand, learned counsel appearing for complainant requested for


9/11/11





SEBI Vs. MANSAROVER PLANTATION & OTHERS

substantial punishment on the ground that during the trial, convicts failed to produce any document to show that they had refunded the amount to the investors. However, learned counsel fairly conceded that SEBI has not produced any document to show that any complaint has been received from any of the investors against the company accused

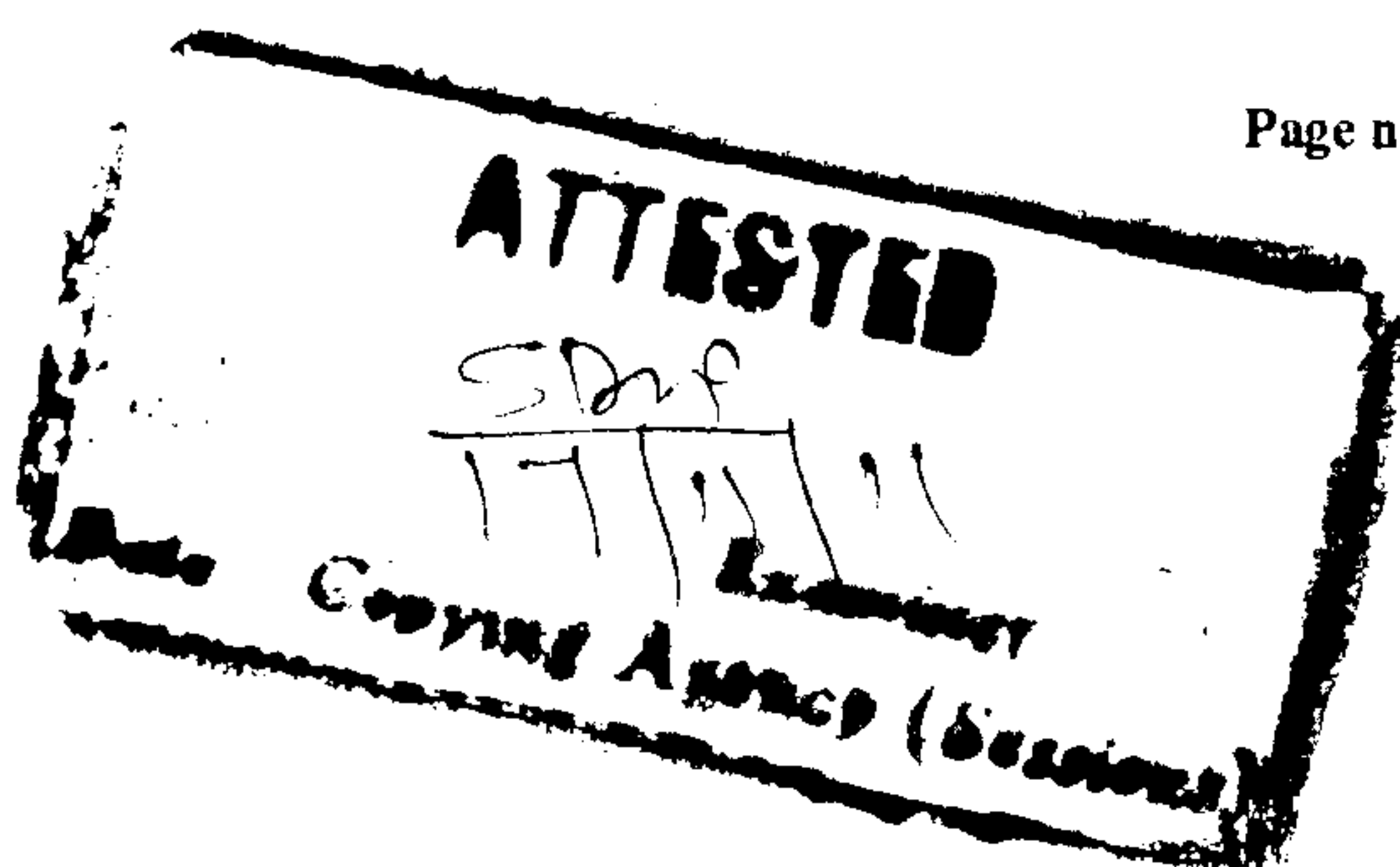
3. I have heard Counsel for both parties, perused the record carefully and gave my thoughtful consideration to their submissions.

4. **Admittedly**, the company accused had mobilized funds to the tune of ₹16,25,000/-. Though during the trial, company accused failed to produce any document to show that company accused (convict no.1) had refunded the amount to all its investors. But simultaneously, SEBI has also failed to produce any document to show that any investor had filed any complaint with the SEBI stating that company accused had not refunded the mobilized funds. Convict no.3 is a female and there is no criminal antecedents of any of the convicts.

5. **Considering** the above, 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 ₹ 1,60,000/- upon each of convicts i.e convict No.1 to convict no.4 in default convict nos. 2 to 4 shall undergo three months simple imprisonment for the offence punishable under Section 24 (1) read with Section 27 of the SEBI Act.

6. **Fine** amount is paid.


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

[Signature]
9/11/11

Announced in the open Court
on this 9st day of November, 2011. (PAWAN KUMAR JAIN)
ADDITIONAL SESSIONS JUDGE-01
CENTRAL/THC/DELHI

*Copy given to convicts
in the Court for
on 14/11/11
[Signature]*

