

IN THE COURT OF ADDITIONAL CHIEF METROPOLITAN
MAGISTRATE, DELHI

CC NO: 1178 OF 2003

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 Asst. General Manager,
Rakesh Bhanot.

...Complainant

VERSUS.

1. Pepkar Forests India Ltd. Company
Incorporated under the Companies Act,
1956, having its Regd. Office at Hari
Niwas, Subhash Nagar, Clementown,
Dehradun-248 001 (Uttaranchal) and
Head office at 204, Satija House
Commercial Complex, Dr. Mukharji
Nagar, Behind Batra Cinema, Delhi-
110 009 and also at B/255,
Bhajanpura, Main Market, Delhi-110
053.

2. Shri Pritam Singh S/o Late Shri Badal
Singh, Director of Accused No.1, R/o:
H.No.66, Sewla Khurd, Mohabeywala,

ATTESTED



Dehradun (U.P.)

3. Shri Mudrika Singh Yadav, Director of
Accused No.1, R/o: Village Nawapura,
Post Tamalpura, Distt. Ghazipur (U.P.)
4. Smt. Shyam Lata W/o Shri Sudesh
Kumar, Advocate, Director of Accused
No.1, R/o:1, Turner Road, Trimurti
Vihar, Clement Town, Dehradun (U.P.).
5. Shri Kiran Warnawal D/o Shri R.C.
Warnwal, Director of Accused No.1,
R/o: F-2955, Netaji Nagar, New Delhi.

P.O.

P.O.

.....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:

ATTESTED

1/5/11



CC No. 66/10

Item no.13

22.07.2011

Present: Sh. R. K. Pillai, Counsel for the complainant.
Accused no.1 is company represented by none.
Accused no. 2, 4 and 5 are PO vide order dated
11.07.2008 and 16.07.2006.
Accused no. 3 in person.

Vide separate judgement A1 and A3 are held guilty for
the offence punishable under Section 24(1) read with Section 27 of
the SEBI Act.

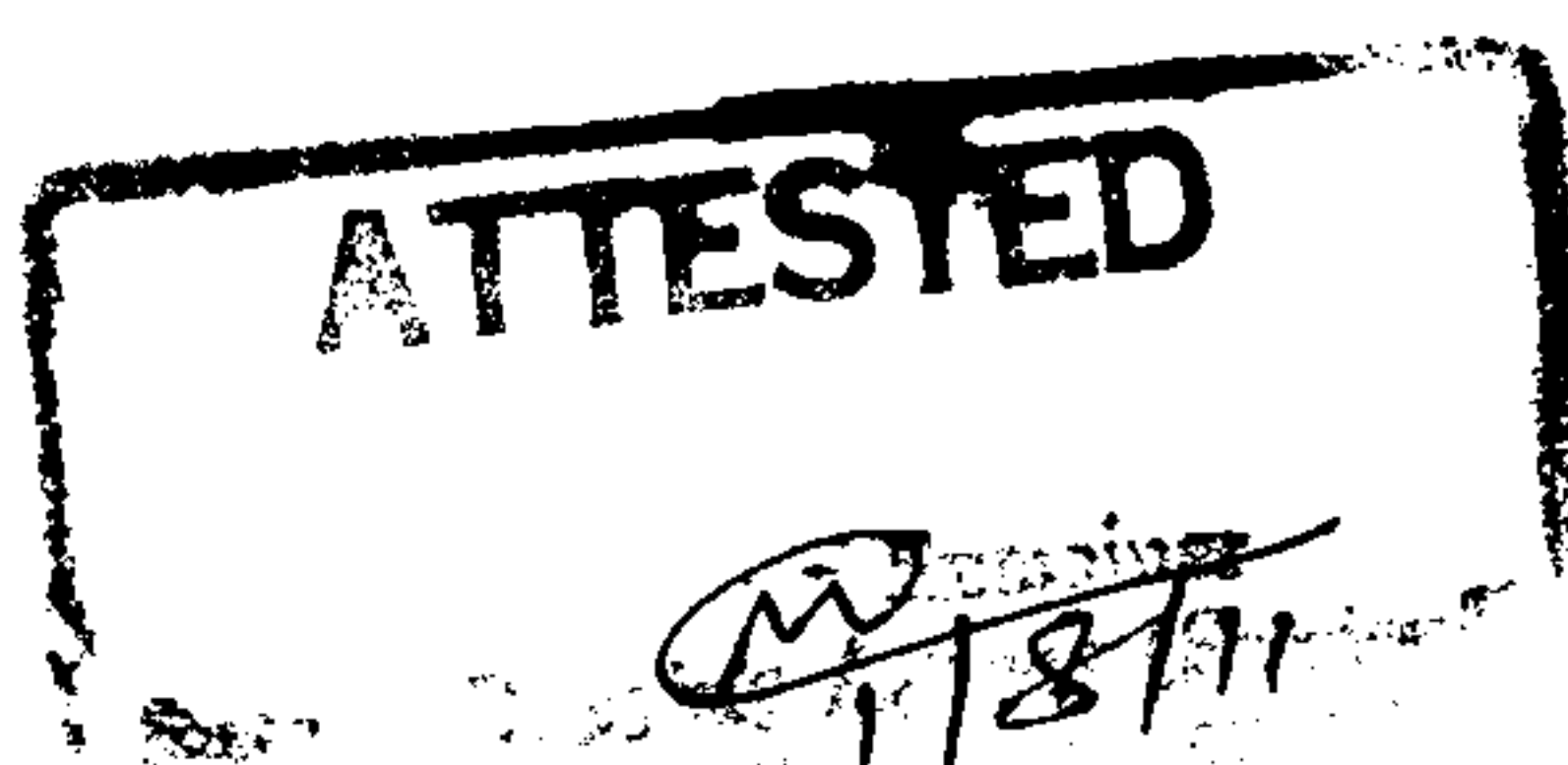
Arguments heard on the point of sentence.

Vide separate order, convict no.1 is burdened with a fine
of ₹ 2,00,000/- whereas convict no.2 Mudrika Singh Yadav is
burdened with a fine of ₹ 50,000/- in default convict no.2 shall
undergo three months SI for the offence punishable under Section
24(1) of the SEBI Act.

Fine amount is paid.

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

Copy of judgement along with order on the point of

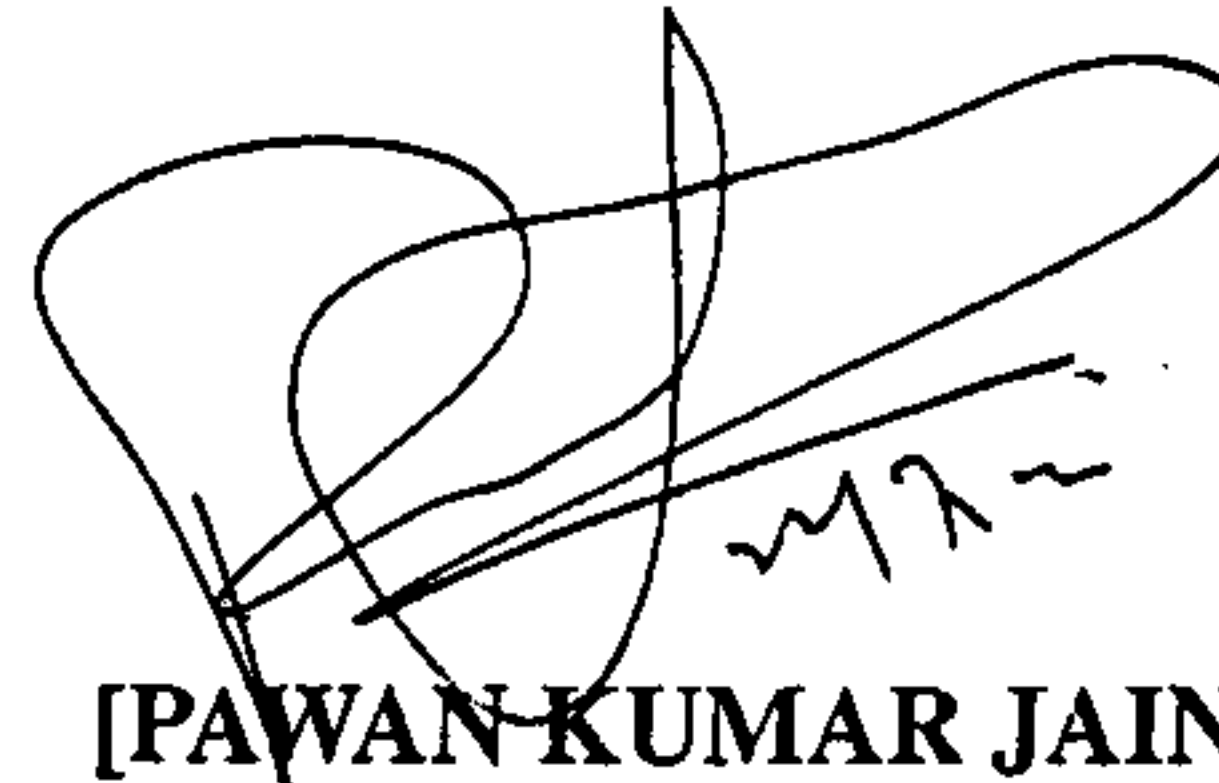




sentence be given to the convict no.2/his counsel free of cost.

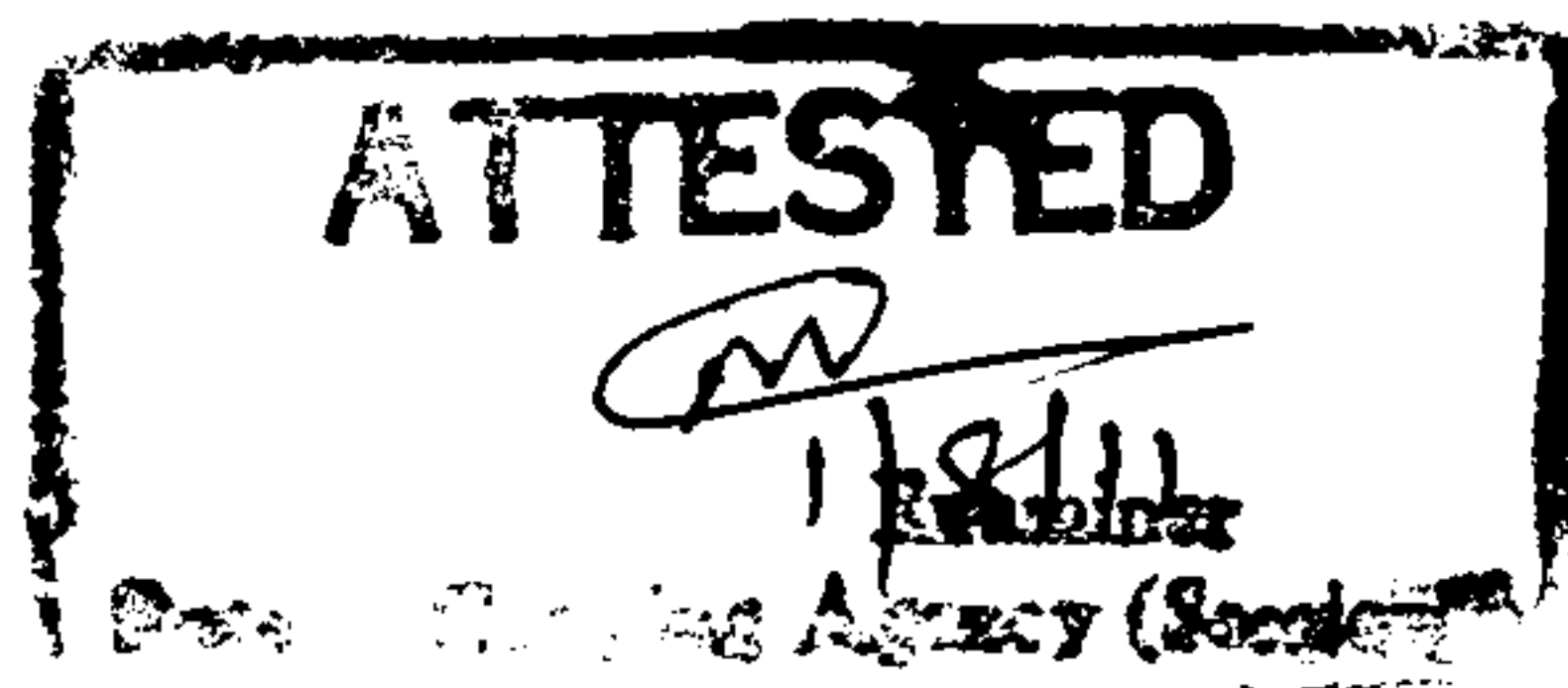
Counsel for the complainant submits that complainant is not aware about the properties of convict no. 1 and states that complainant will move appropriate application as and when complainant would come to know about the same and requests to adjourn the matter sine-die till then.

Since, convict no. 2,4 and 5 are have been declared Proclaimed Offender during the trial, file be consigned to record room with direction same be revived as and when they are arrested/surrender.



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

22.07.2011





SEBI Vs. Pepkar Forest India & others

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

Complaint Case No. 66/10
ID No: 02401R0272932003

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 its Manager Sh. Rakesh Bhanot, AGM, SEBI.

.....Complainant

Versus

1. **M/S Pepkar Forests India Ltd.** Company incorporated under the Companies Act, 1956, having its Regd. Office at Hari Niwas, Subhash Nagar, Clementown, Dehradun-248 001 (Uttaranchal) and Head Office at 204, Satija House Commercial Complex, Dr. Mukharji Nagar, Behind Batra Cinema, Delhi-110 009 & also at B/225, Bhajanpura, Main Market, Delhi-110 053.

.....Accused no.1

2. **Sh. Pritam Singh** s/o Late Sh. Badal Singh, Director of accused No.1, R/o: H. No. 66, Sewla Khurd, Mohabeywala, Dehradun (U.P).

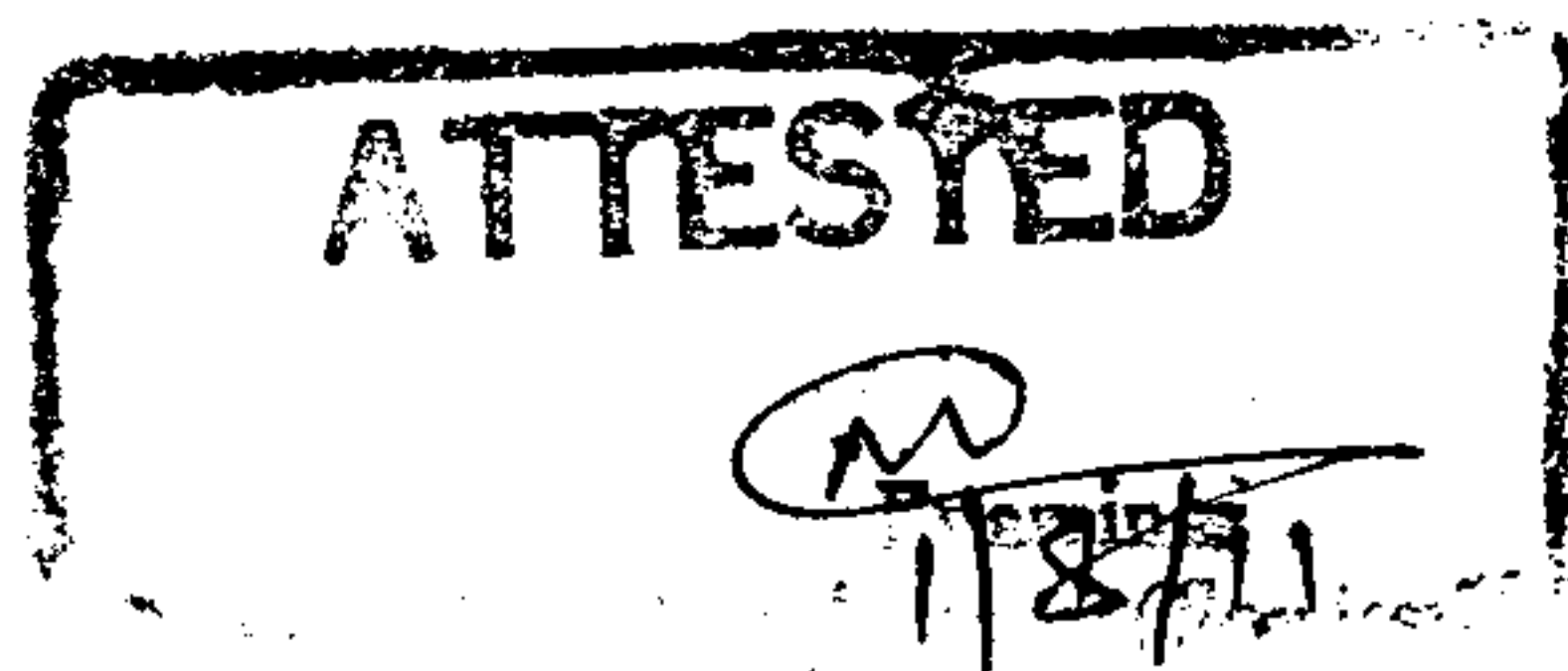
.....Accused no.2

3. **Sh. Mudrika Singh Yadav**, Director of Accused No.1, R/o Village Nawapura Post Tamalpura, PS Mohmadabad, Distt. Ghaziapur (U.P.).

.....Accused no.3

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4. **Smt. Shyam Lata** w/o Sh. Sudesh Kumar, Advocate, Director of Accused No.1, R/o: Turner Road, Trimurti Vihar, Clement Town, Dehradun (U.P).

.....Accused no.4

5. **Ms. Kiran Warnawal**, D/o Sh. R. C. Warnwal, Director of Accused no.1, R/O F-2955, Netaji Nagar, New Delhi.

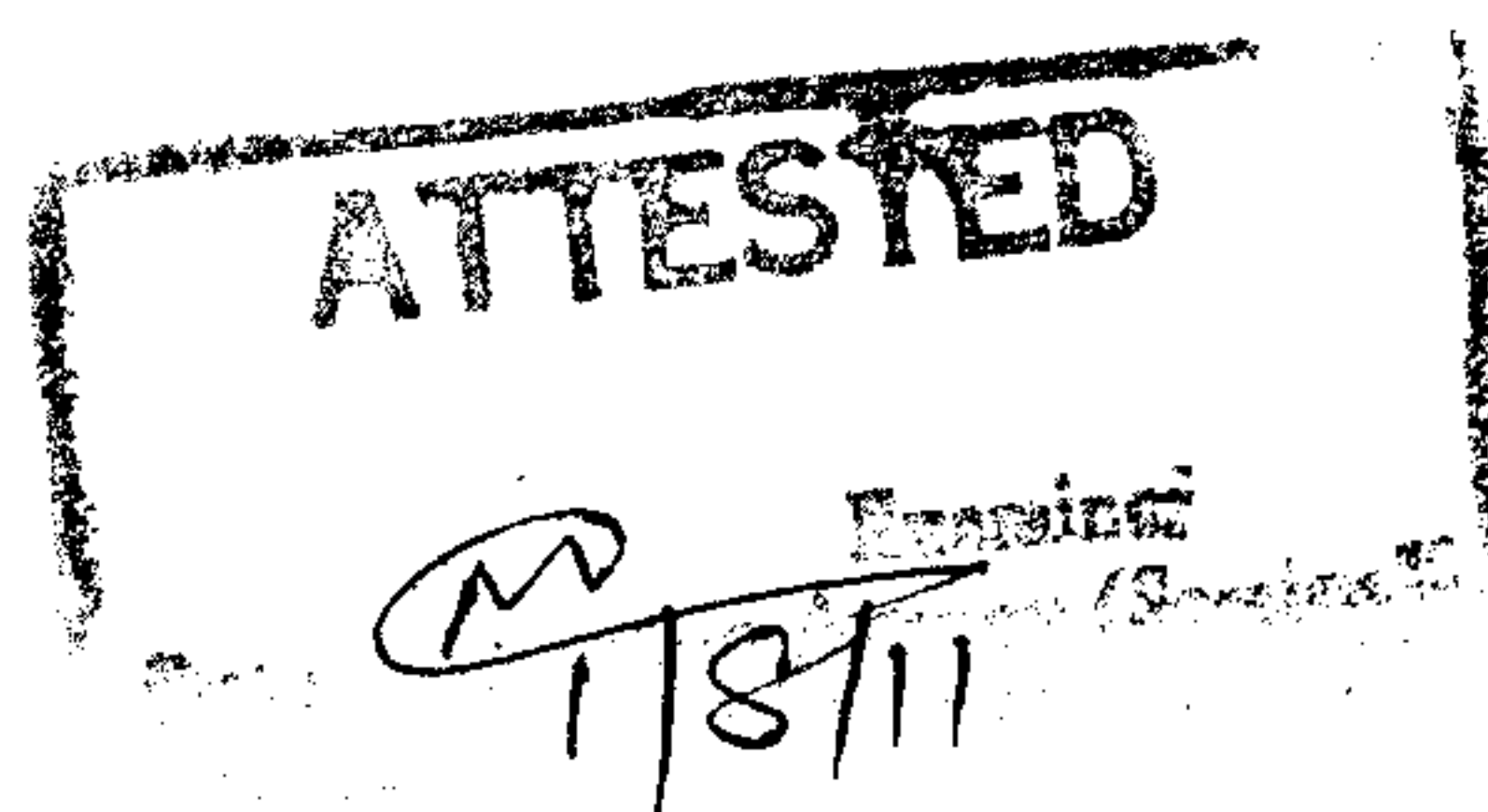
.....Accused no.5

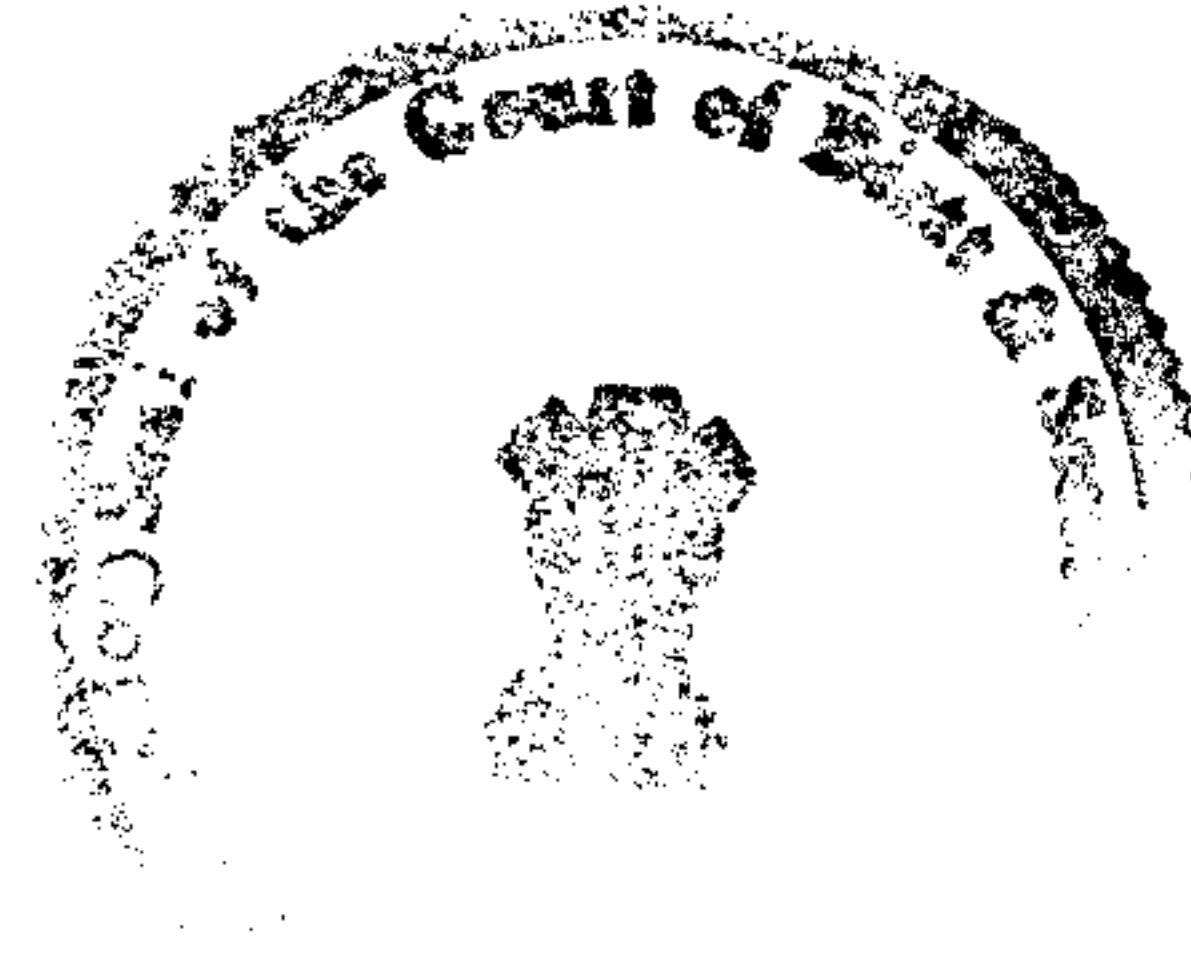
Date of Institution : 16.12.2003
Date of Judgment reserved on : 06.07.2011
Date of pronouncing of judgment : 22.07.2011

Present: **Sh. Sanjay Mann**, Advocate for the SEBI
None for accused no.1 company.
Sh. Anish Bhola, Advocate, Counsel for accused no. 3.
Accused no. 2,4 & 5 have already been Proclaimed offenders

JUDGMENT :

1. This criminal complaint was preferred by the Securities & Exchange Board of India (hereinafter referred to as "SEBI" or "the complainant"), on 16.12.2003 in the Court of Additional Chief Metropolitan Magistrate (ACMM), alleging violation of the



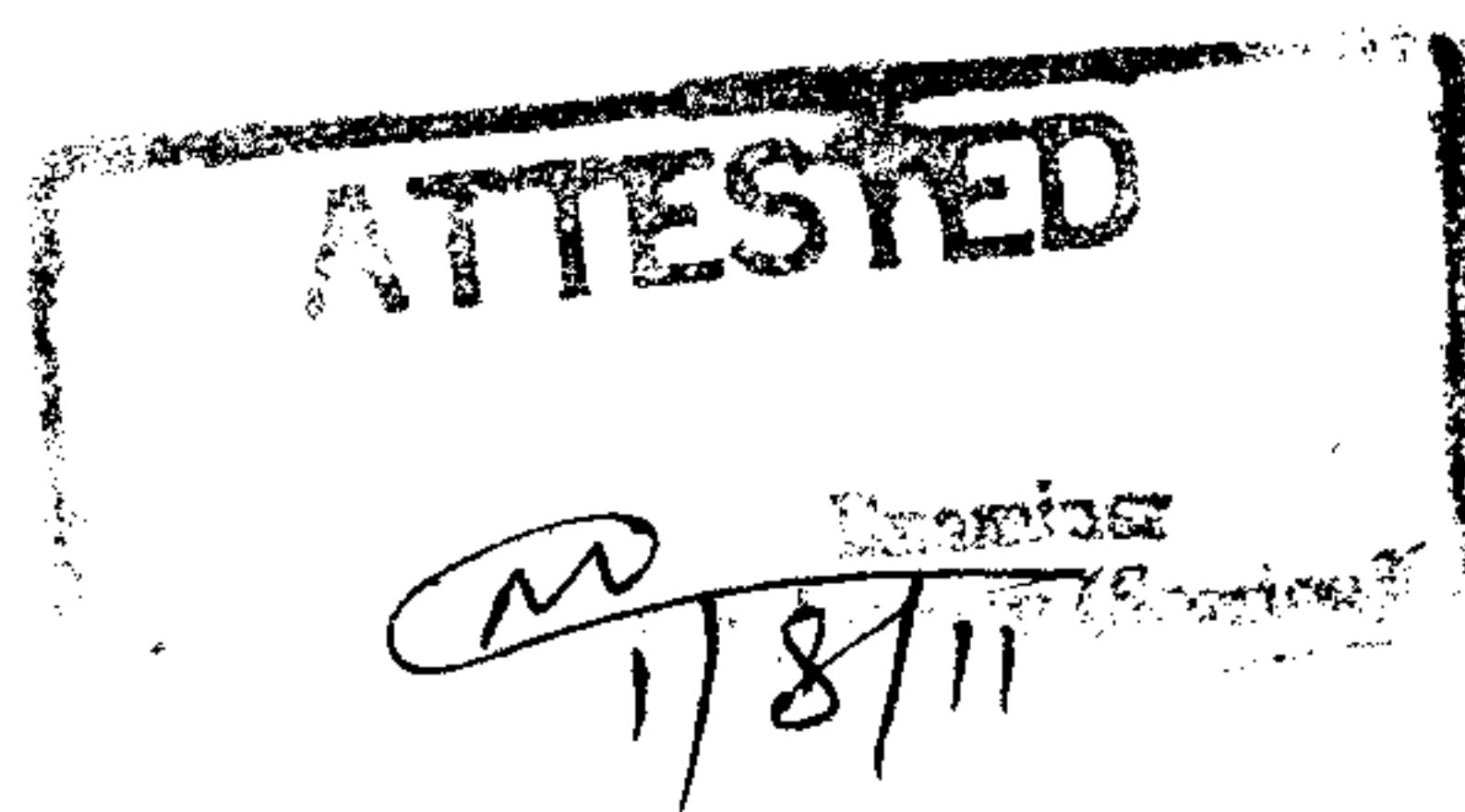


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provisions of Section 12 (1B) of Securities & Exchange Board of India Act, 1992 (hereinafter, "the SEBI Act") and Regulation Nos. 5(1) read with 68(1), 68(2), 73 and 74 of the Securities & Exchange Board of India (Collective Investment Schemes) Regulations, 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 M/S Pepkar Forests India Ltd. Company (hereinafter, "A1" or "the Company Accused"), accused No. 2 Sh. Pritam Singh ("A2"), accused No. 3 Sh. Mudrika Singh Yadav ("A3"), accused No.4 Smt. Shyam Lata ("A4") & accused No.5 Ms. Kiran Warnawal, ("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 provision contained in Section 27 of the SEBI Act.

3. It is alleged in the complaint that A1 had floated the Collective Investment Scheme (CIS) and raised amount approximately ₹ 19.1 lacs from general public, in violation of the provisions contained in Section 12 (1B) of the SEBI Act. It is also

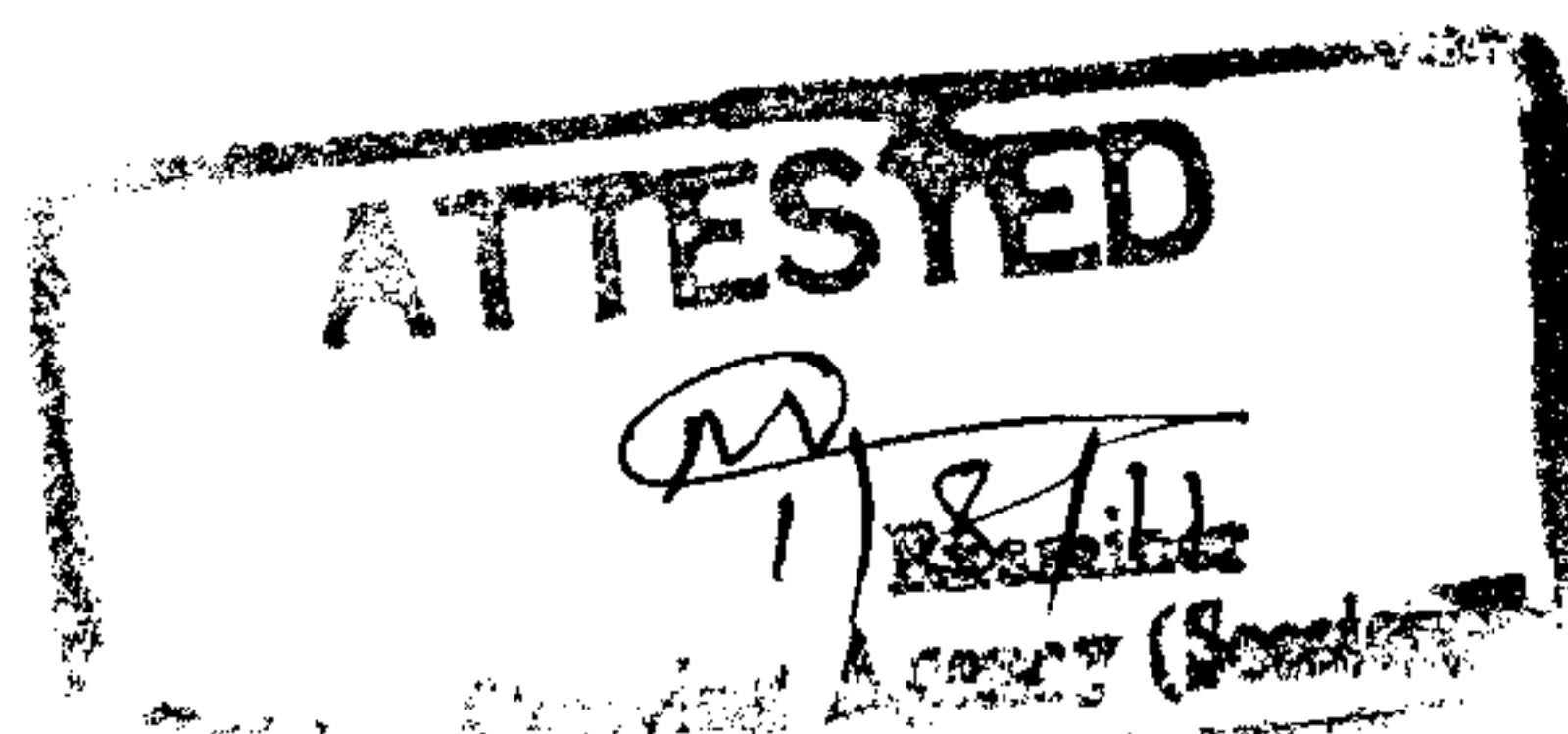




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alleged that after coming into force of the CIS Regulations and in spite of public notice dated December 18, 1997, the accused persons had failed to get the Collective Investment Scheme registered with SEBI or to wind up the said scheme or repay the amount collected from the investors in terms of the CIS Regulations, thus constituting violation of the law and regulations framed thereunder and thereby committing the offence alleged as above.

4. Cognizance on the complaint was taken by the learned ACMM vide order dated 16.12.2003 whereby process was 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. 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 14.03.2005 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 16.02.2006, A5 was declared proclaimed offender while A2 & 4 were declared proclaimed offenders vide order dated 11.07.2008 on account of their non-appearance.





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Thereafter, vide order dated 15.5.2009, a notice for the offence punishable under Section 24 read with section 27 of the SEBI Act was served upon the A1(company) & A3. Since A3 represented A1 company accused, he also responded to the notice on behalf of company. A3 pleaded not guilty on his behalf as well as on behalf of A1 (company).

7. To prove its case, complainant has examined only one witness named Sh. Rakesh Bhanot, AGM, SEBI. Thereafter, A3 was examined under Section 313 Cr.P.C wherein A3 denied all the evidence led by complainant and submitted that he was merely a sleeping director in the company accused and was not responsible or involved in the day to day affairs of the accused company. He further submitted that A2 Pritam Singh being the Managing Director of company accused was responsible for the day to day affairs of the company accused. He further took the plea that he had resigned from the company accused on 28.02.1998 and information regarding his resignation was sent to ROC vide letter dated February 5, 2010.

8. To prove his innocence, A3 has examined himself as DW1.

9. I have heard arguments advanced by Sh. Sanjay Mann, Advocate, counsel for complainant and Sh. Anish Bhola

ATTESTED

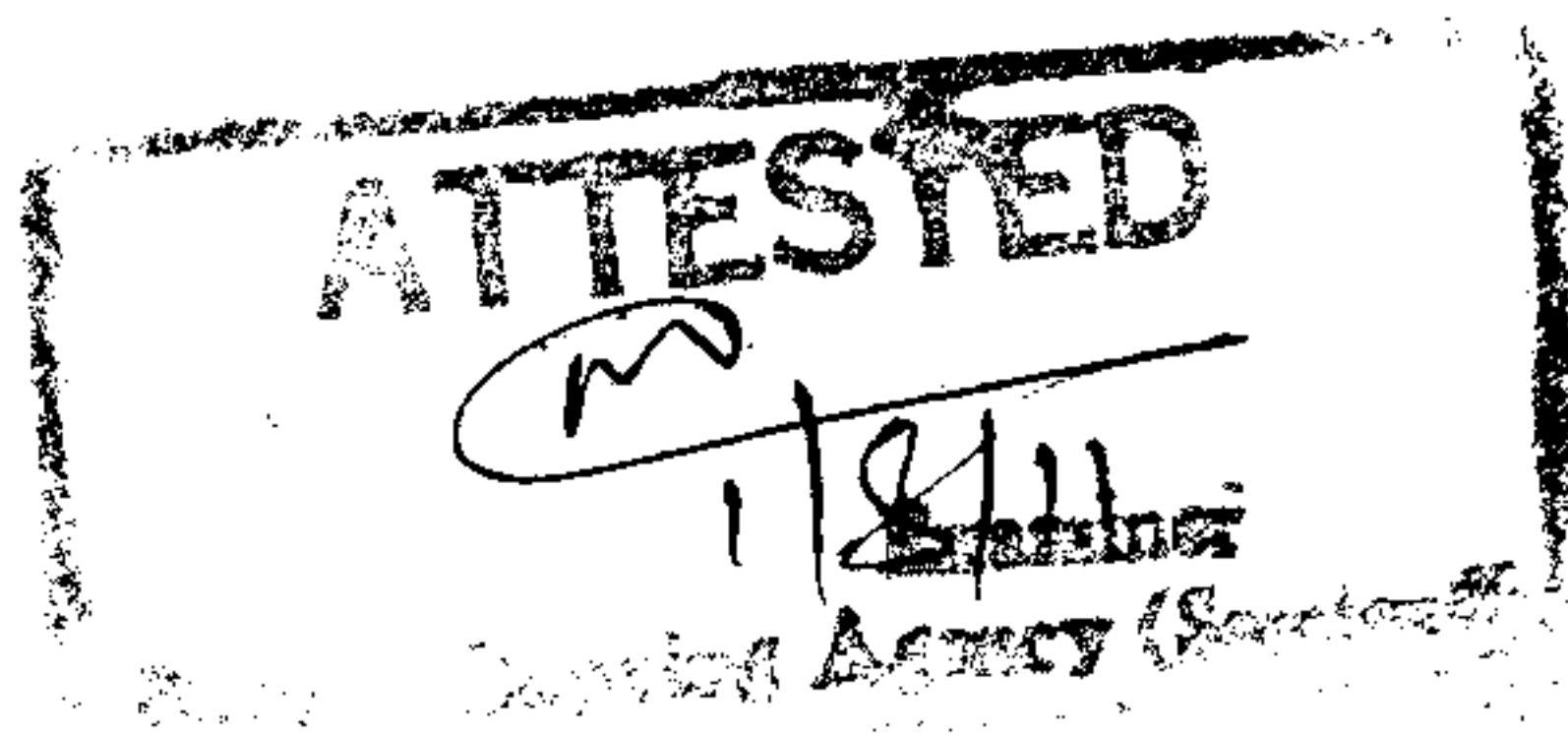
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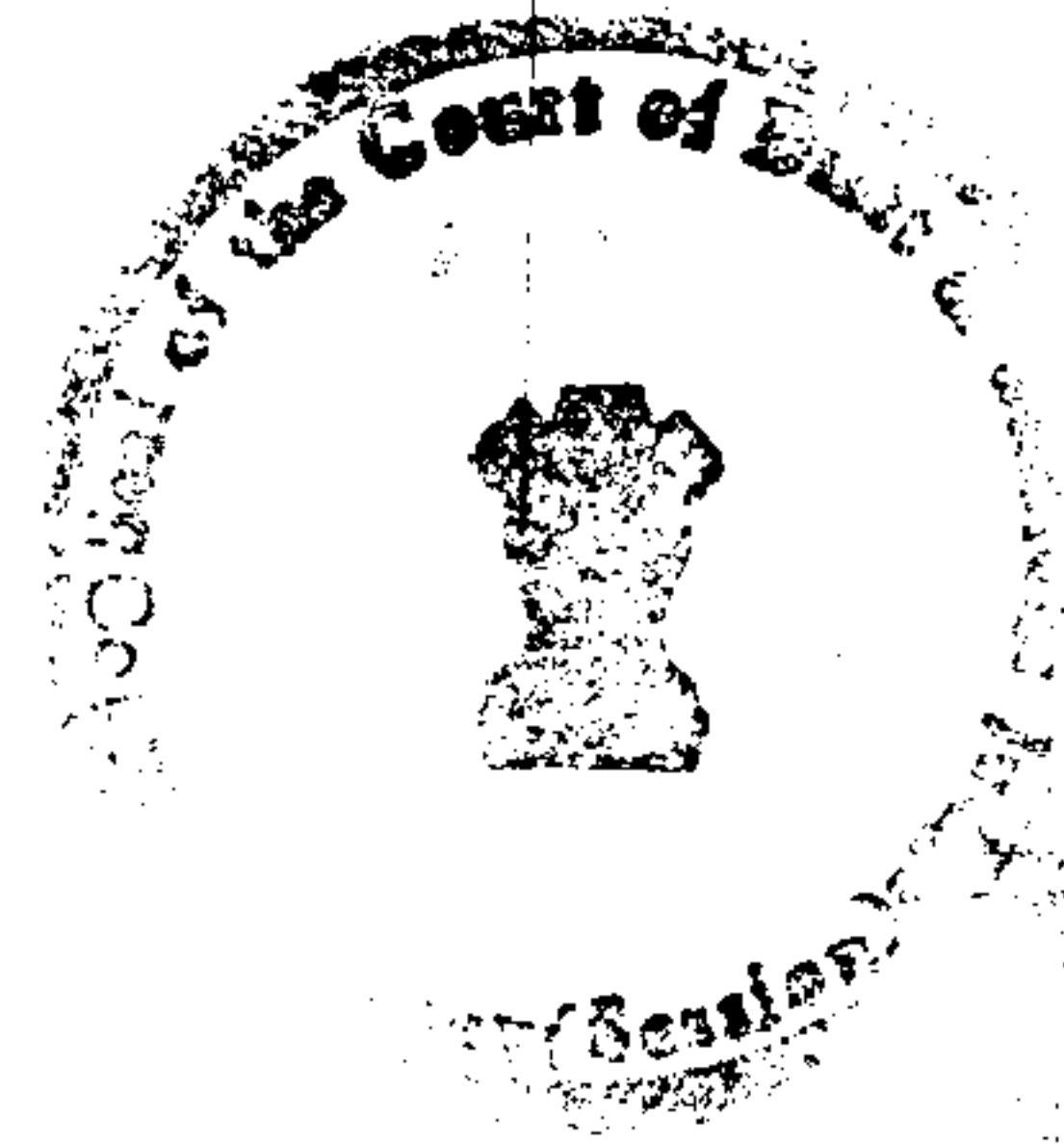
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Advocate, counsel for A3 and perused the record carefully.

10. Learned Defence Counsel for A3 vehemently contended that A3 is not liable for any violation committed by the company accused as he was merely a sleeping Director in the company accused and was not in-charge of and responsible to, the company accused for the conduct of its business. It was further submitted that he had resigned from the company accused from the post of Director on 28.02.1998 much before filing the present criminal complaint by the SEBI, thus it was argued that A3 is not liable for the violation committed by the company accused after his resignation. It was further argued that the present complaint is otherwise not maintainable as it was not filed by the authorised representative and the same is barred by the period of limitation.

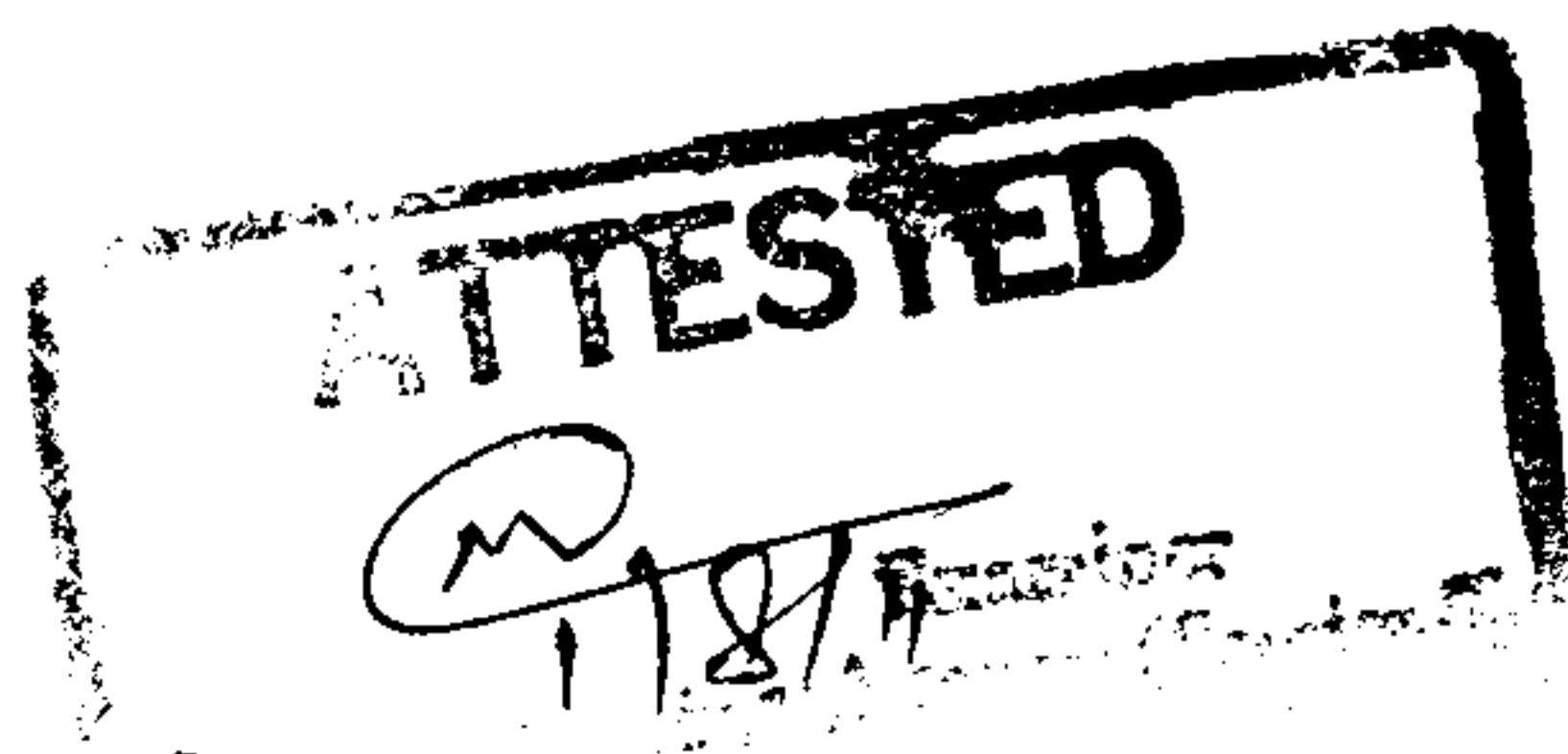
In support of his contentions, learned defence counsel relied upon the judgment '*Rashima Verma Vs. SEBI*' reported in 157(2009) DLT 417, '*National Small Industries Corporation Ltd. Vs. Harmeet Singh Paintal & Anr.*' (2010)3 SCC 330 & '*Manish Kant Aggarwal & National Agriculture Corporating Marketing Federation of India*' reported in 156 (2009) of DLT 415 & '*Virender Kumar Singh Vs. SEBI* unreported judgment decided on 30.01.2008 by the High Court of Delhi, New Delhi.





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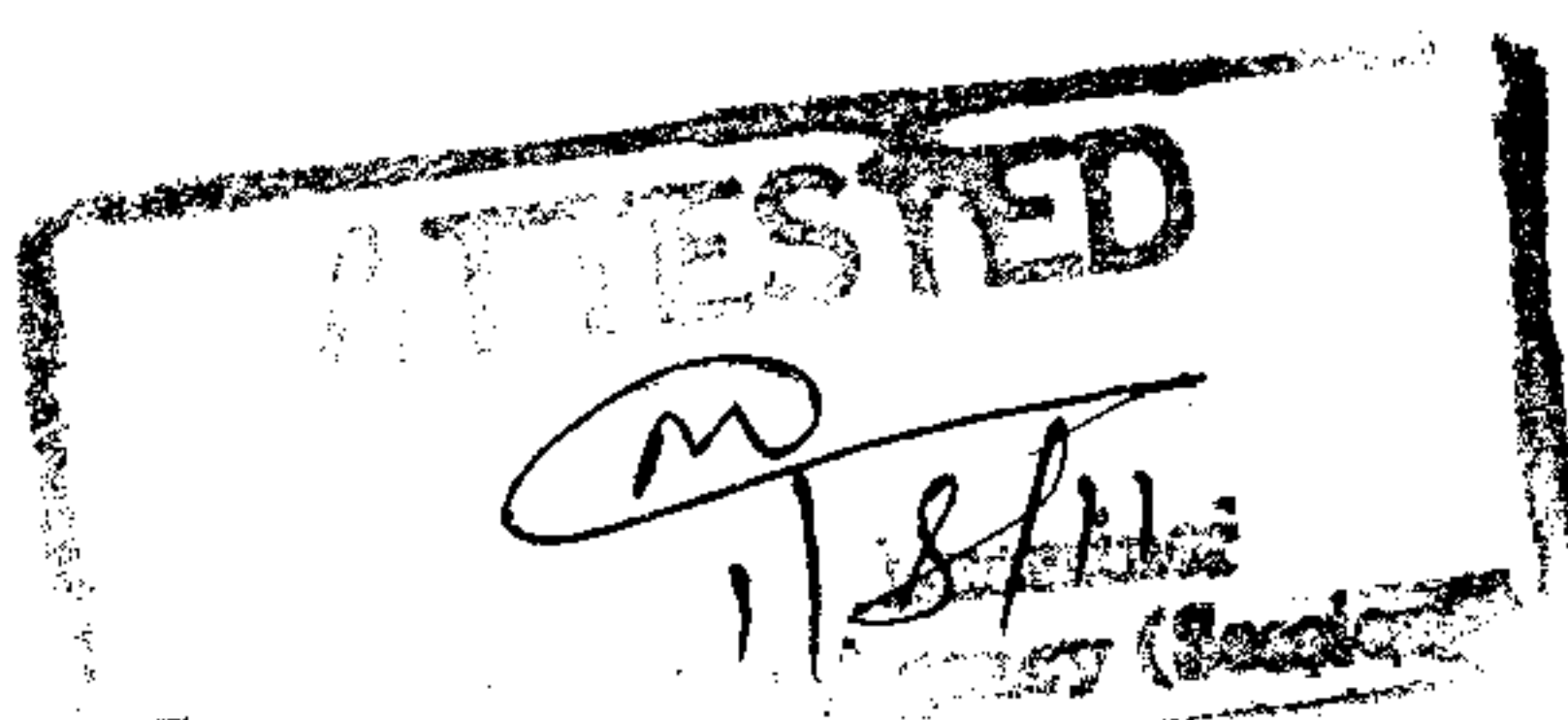
11. On the other hand, learned counsel appearing for complainant refuted the said contentions by arguing sagaciously that A3 was Director at the time of incorporation of the company accused and was also director when the company accused had launched CIS and mobilized funds from general public. It was urged that A3 had sent the intimation of his resignation with the ROC only in February 2010, thus there was nothing on the record which may proved that A3 had resigned on 28.2.1998. It was contended that since A3 was in charge of and responsible to, the company accused for the conduct of its business, he was also liable for the violation committed by the company accused. It was further argued that since the violation committed by the company accused was continuous in nature, thus the criminal complaint filed by the SEBI is not barred by the period of limitation. It was further argued that the criminal complaint had been filed by duly authorized person.
12. Before dealing with the contentions raised by learned counsel for A3, I deem it appropriate to discuss whether company accused had committed any violation under the SEBI Act or not.
13. It is undisputed fact that company accused was incorporated in the year 1997. A3 in his cross examination





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admitted that he was one of the directors in the company accused when it was incorporated. Company accused had sent a letter to the SEBI on May 27, 1998 which is exhibited as Ex. CW1/5 wherein company accused informed the SEBI that company accused had not floated any new CIS subsequent to the public notice issued by the SEBI on December 18, 1997 and further intimated that company accused had not mobilized any further fund under the existing scheme and company would mobilize the fund only after obtaining rating of the existing scheme and ensured that company would comply with directions issued by the SEBI from time to time. Before that company accused had also sent a letter to the SEBI which is exhibited as Ex. CW1/B and was received in the office of SEBI on November 15, 1998 wherein it was informed to the SEBI that company had mobilized fund to the tune of ₹ 19,11,220/- through various schemes launched 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 ₹ 19,11,220/-. In his statement recorded under Section 313 Cr.P.C, A3 did not deny that company accused had not mobilized the funds through various CIS. Even in his deposition, A3 did not dispute the same. However, he took the plea that he was not aware about the same as Pritam Singh was the Managing Director of the company accused and used to look after the day to day affairs of the company accused and he was only



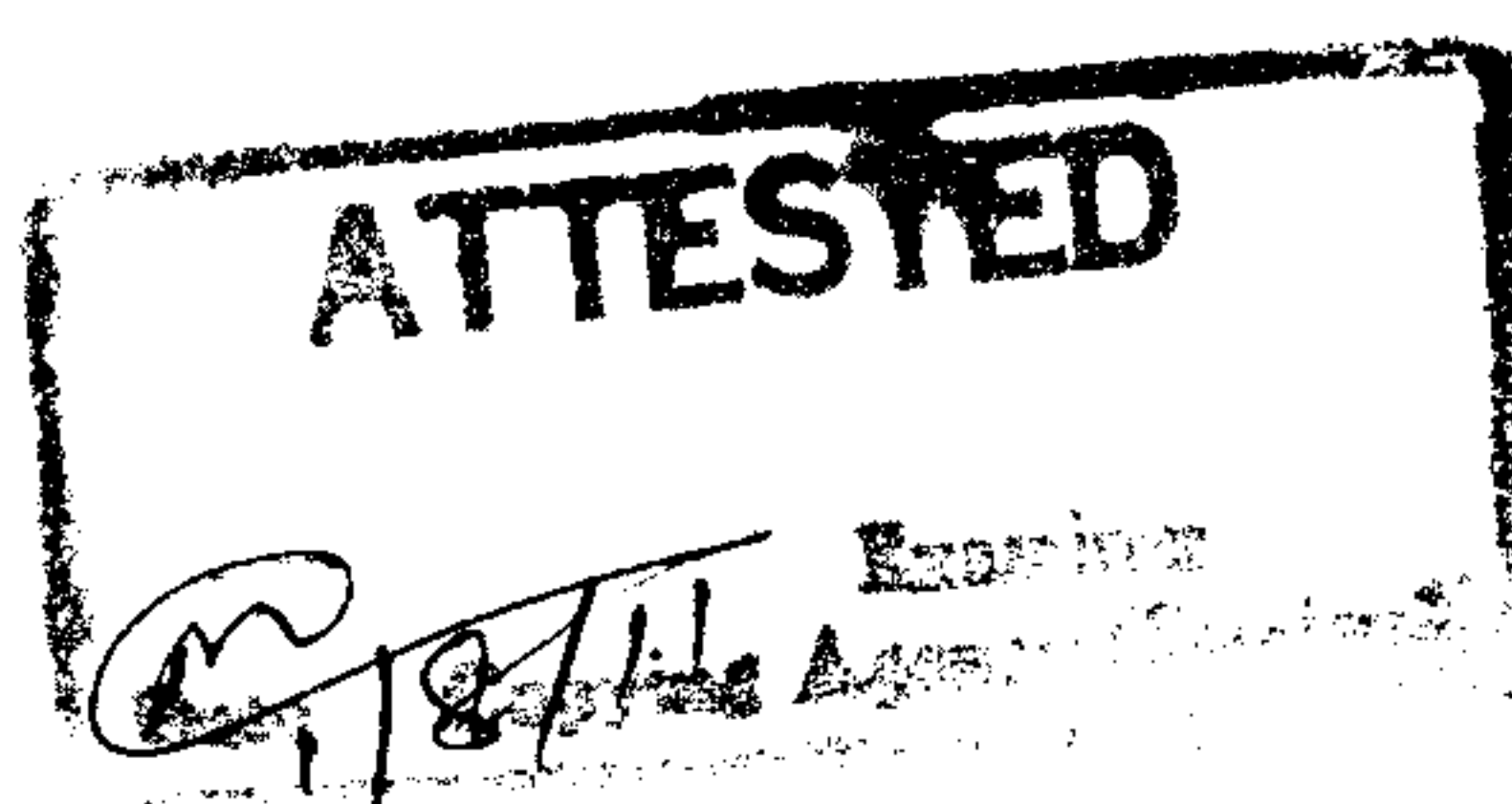


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responsible for the business conducted by the company accused. In the absence of any contrary evidence on record, it is established that company accused had mobilized ₹ 19,11,220/- through various Collective Investment Schemes.

14. Section 12(1 B) was inserted in the Act in the year 1995. By virtue of Section 12(1 B) 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 scheme was launched by the company accused in 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 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 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

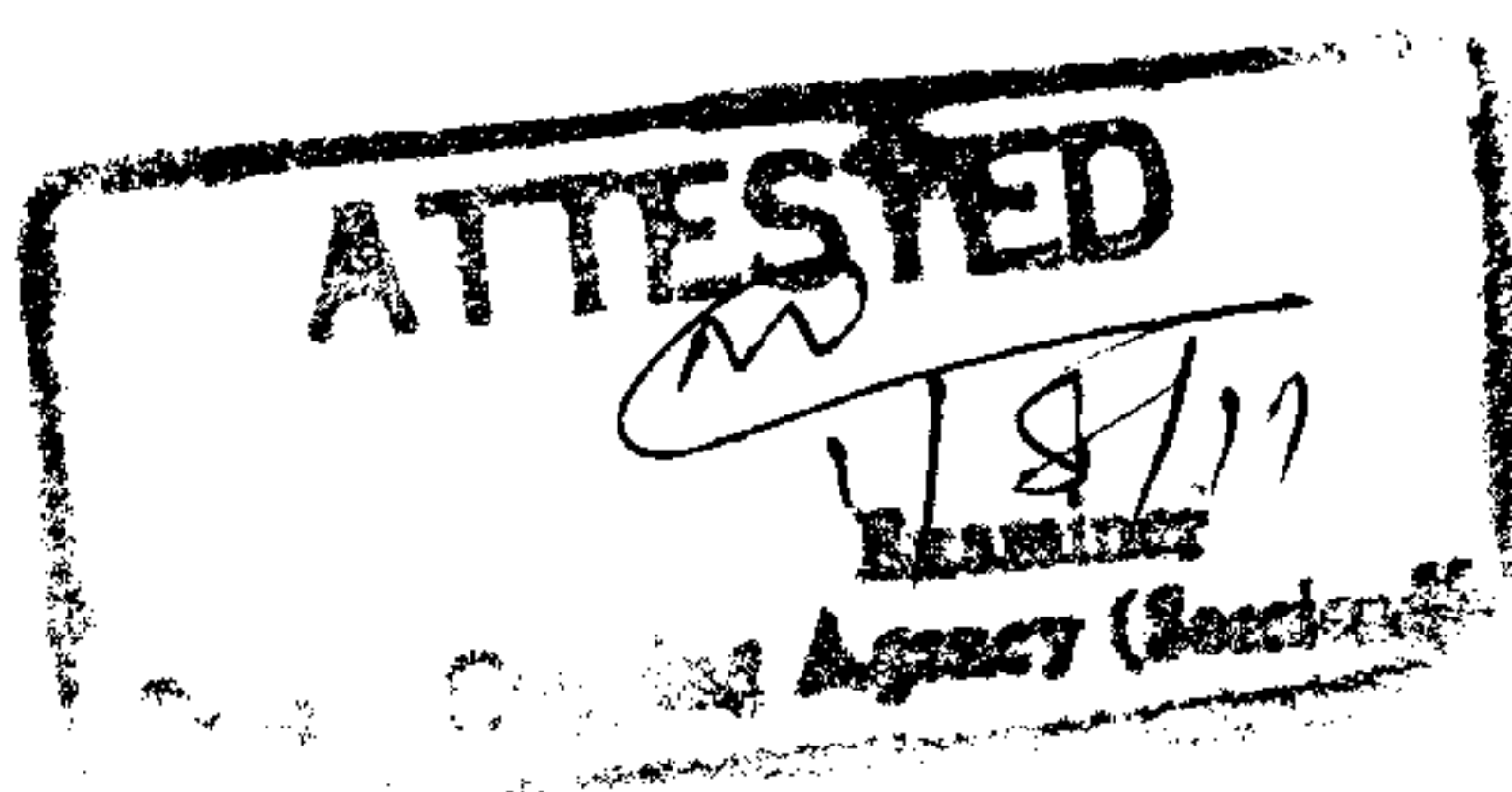




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Allahabad High Court in case **Paramount Bio-Tech Industries Limited Vs. Union of India** reported in 2003 INDLAW All 168, wherein it was held in para 80:-

"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 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,



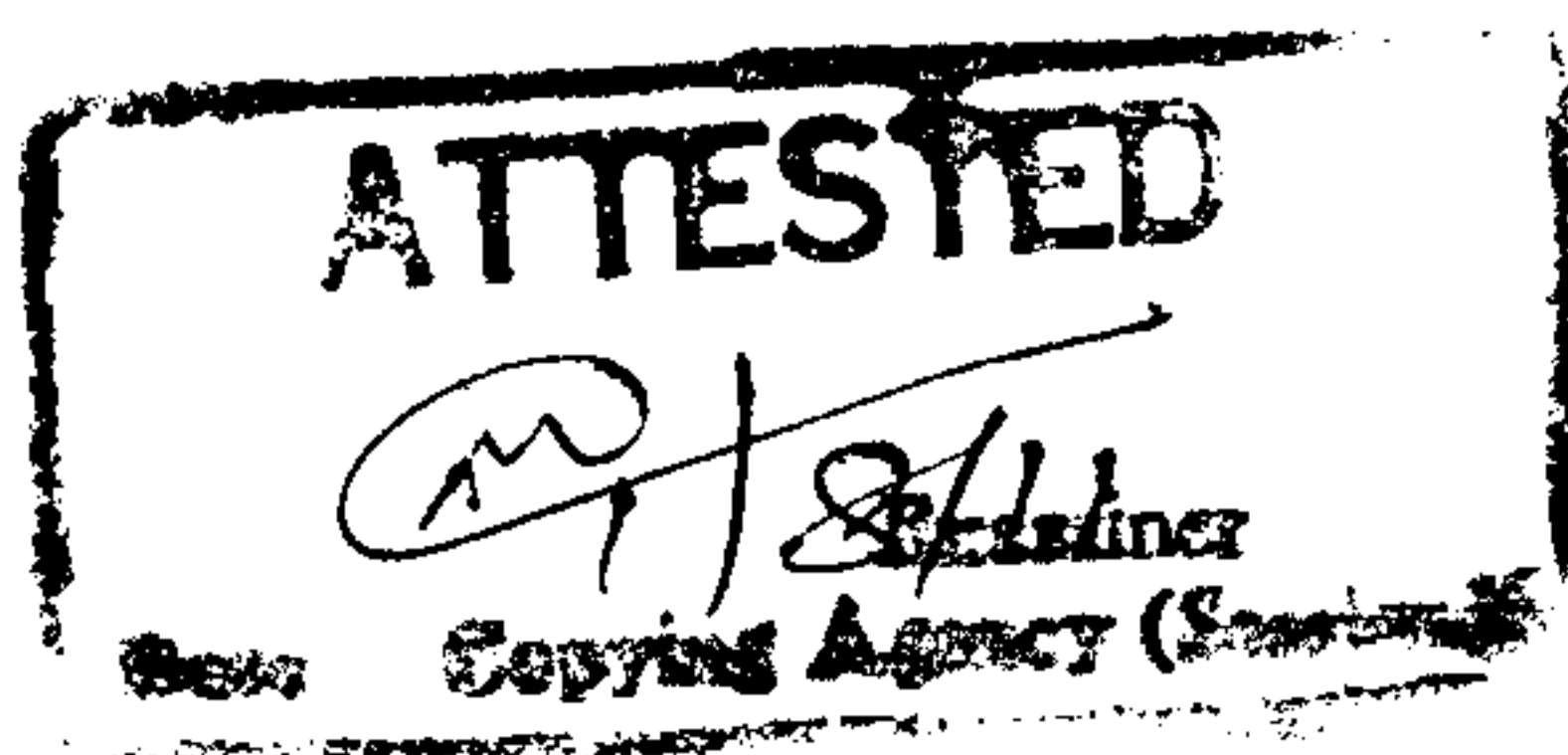


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even this concession could not have been granted by the SEBI, as the proviso to section 12(1B) does not apply to the petitioner, for the reasons given above. The SEBI should in fact have totally prohibited the petitioner from doing the business of 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”.

16. From the above judgment, it becomes clear that merely there was no regulation in the year 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 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.





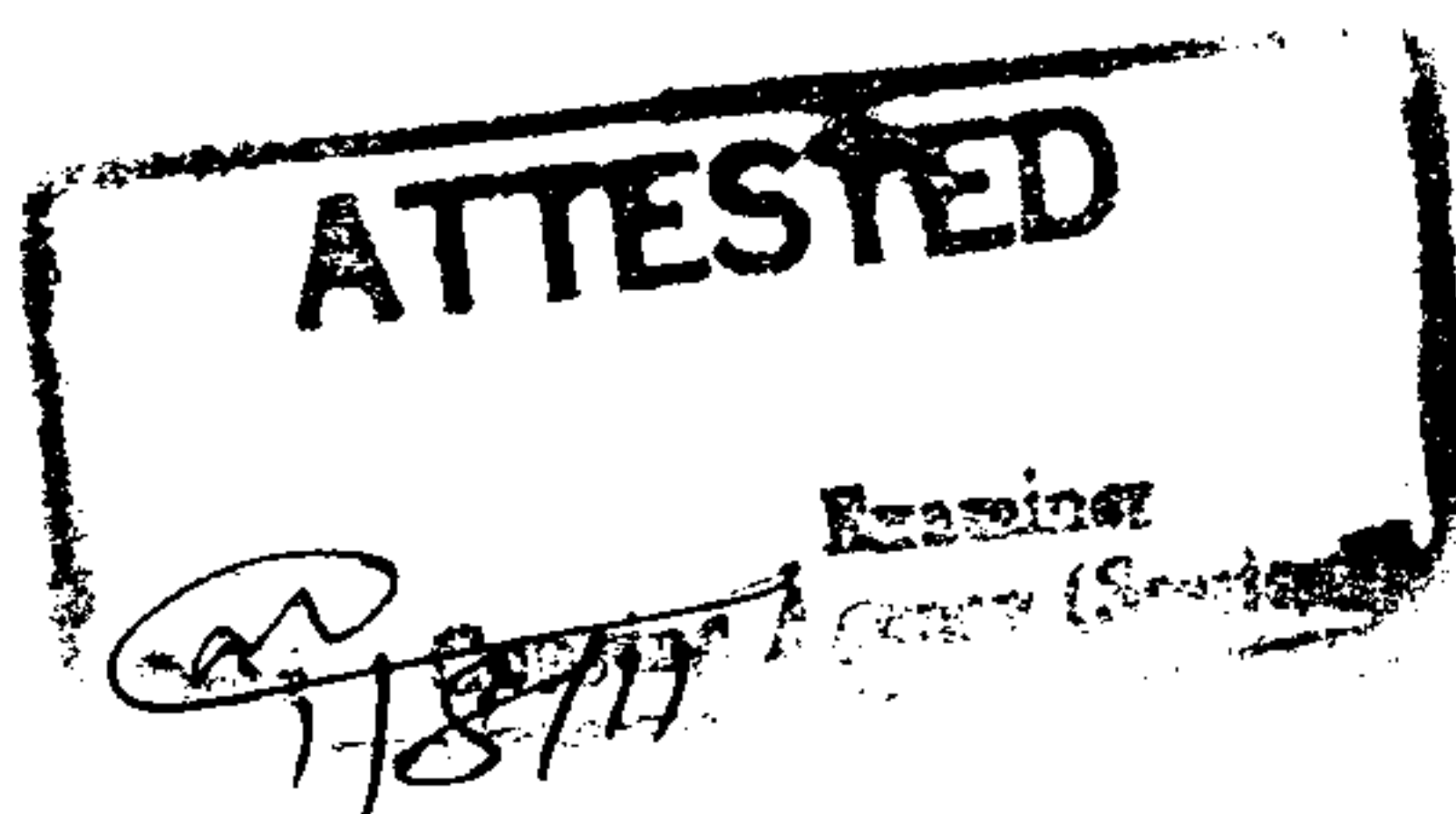
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According to Regulation 73, if the company failed to make any such application, company shall wind up the existing scheme and send the information to the SEBI relating to the scheme and the amount repayable to each investor and the manner in which 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.

18. From the on going discussion, it becomes 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.

19. Now coming to the contention raised by the learned counsel appearing for A3 whether A3 is liable for the violation committed by company accused or not?

20. It is admitted fact that A3 was one of the directors when the company accused was incorporated on April 22,1997. Accused



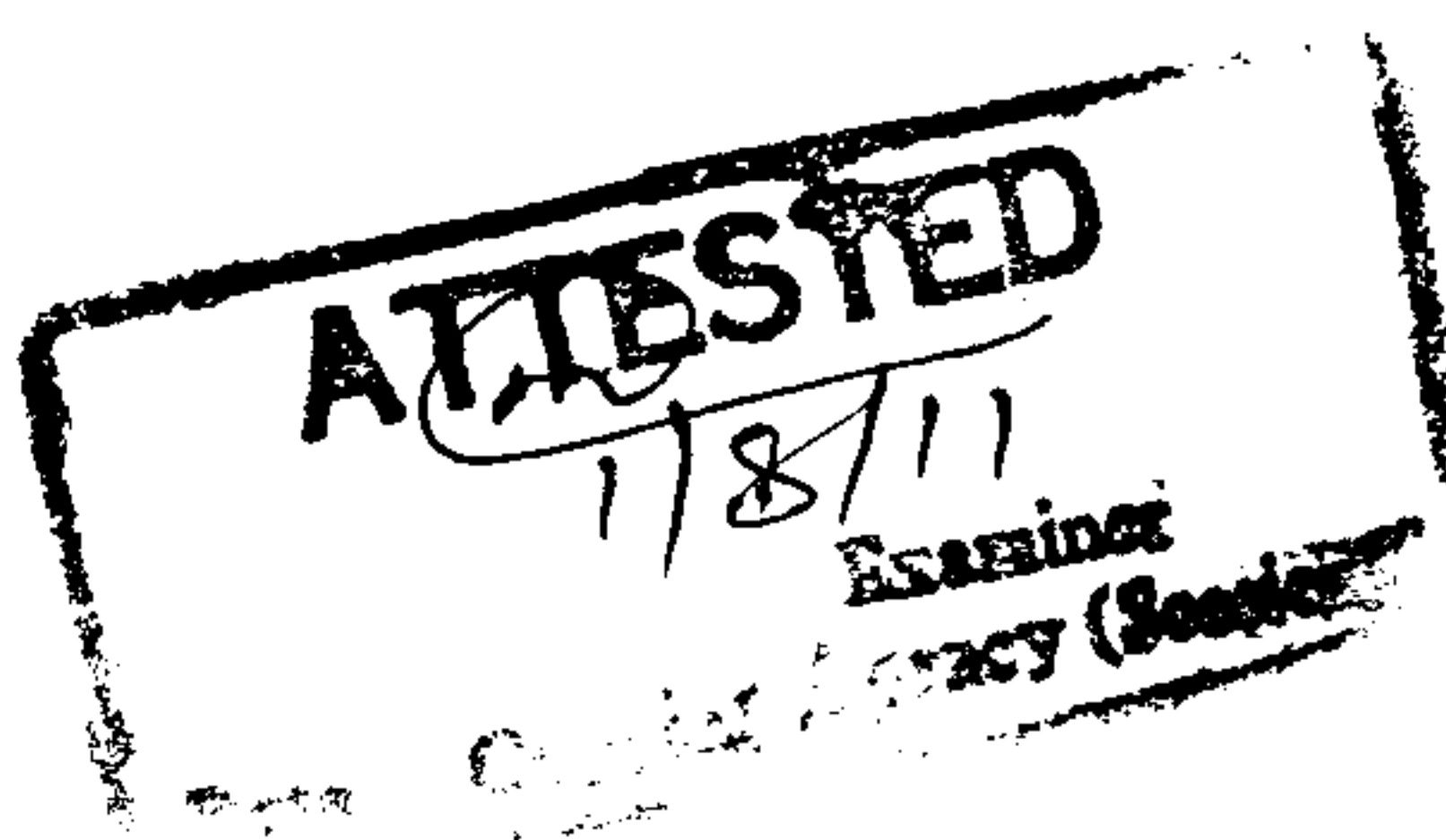


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took the plea that he was not in-charge of and responsible to, A1 for the conduct of its business as the same was being looked after by the Managing Director of the company i.e. A2, who had already been declared proclaimed offender in this case vide order dated 11.07.2008. A3 also took the plea that he was merely a sleeping Director in company accused, moreover he had resigned from the company accused on 28.2.1998.

21. It is undisputed fact that company accused was incorporated on April 22, 1997 and funds were mobilized through CIS in the order 1997 itself. A 3 took the plea that he had resigned from company accused on February 2nd, 1998 assuming for the sake of arguments that A 3 had resigned from company accused in February 1998, even then it is proved that A 3 was director at the time when company accused had mobilized the funds by launching various CIS.

22. It is also undisputed fact that company was incorporated with the main objective to set up farms, forests farms, farm houses, agriculture fields, Orchards, gardens and nurseries and to plant, cultivate, grow, produce or deal in all kinds of agricultural products, woods, commercial woods, crops, seasonal crops, cash crops, fruits, plants, medicinal herbs, flowers, seeds, saplings, fertilizers and their products and to do other such activities





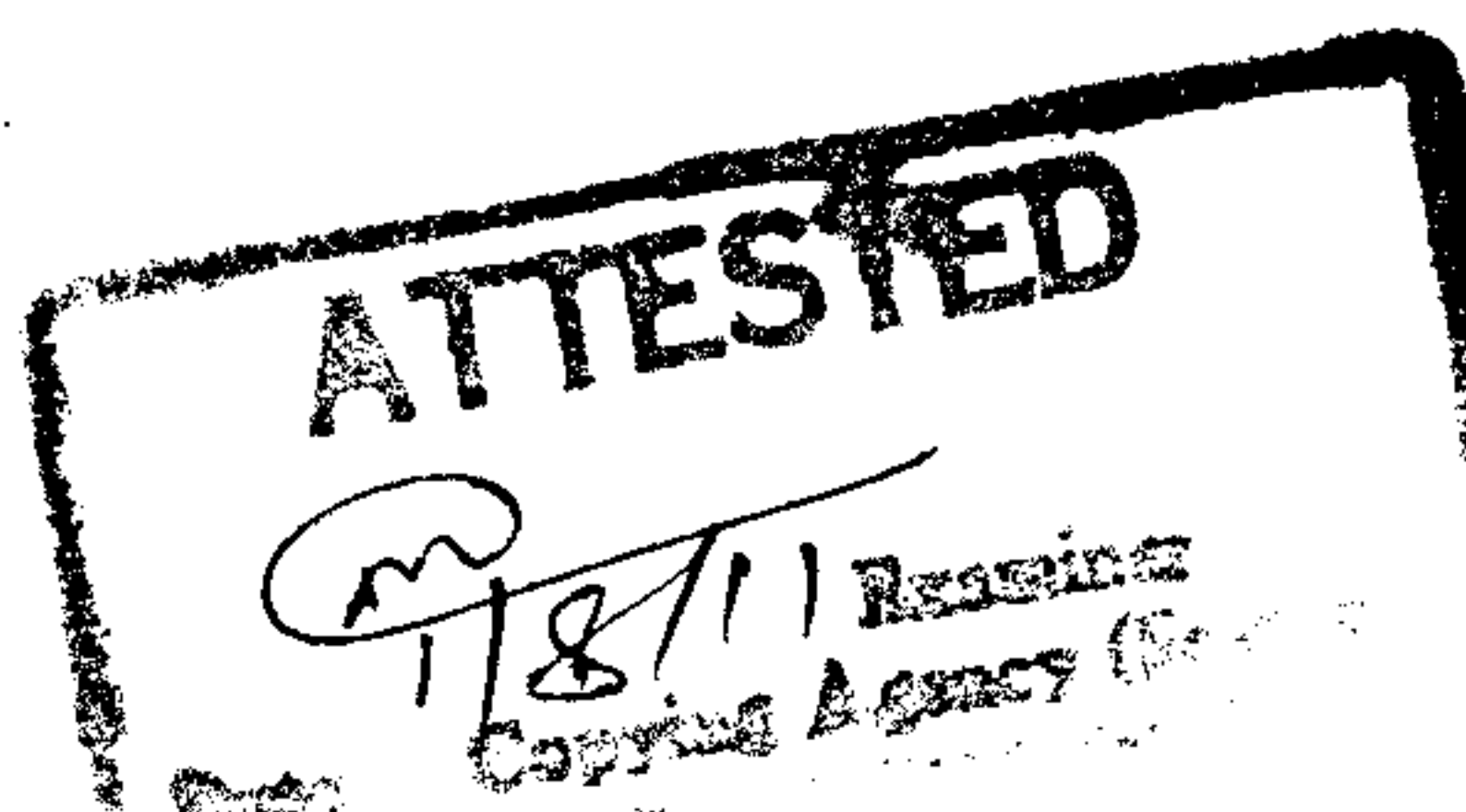
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incidental to social forestry, agriculture and land development and others as mentioned in the memorandum and articles of company accused.

23. Pursuant to the main objectives of company accused, Board of Directors of the company decided to mobilize funds from general public by launching various CIS. As per memorandum and articles of company accused, A 3 was one of the first directors in the company accused which not only decided the main objects of the company accused but also took the decision to mobilize funds from general public by launching various CIS. It is pertinent to mention here that no individual director had any authority to mobilize funds from general public unless said decision is taken by the Board of directors. Needless to say, company takes decision through its Board of Directors and Board of Directors appoints individual director to execute said decision and generally such director is termed as "Managing Director".

24. In the instant case, decision of mobilizing fund through CIS could not be taken by any individual director, it required the approval of Board of Directors. Admittedly, A3 was one of the directors at the time when scheme was launched.

25. As per memorandum of association of the company accused

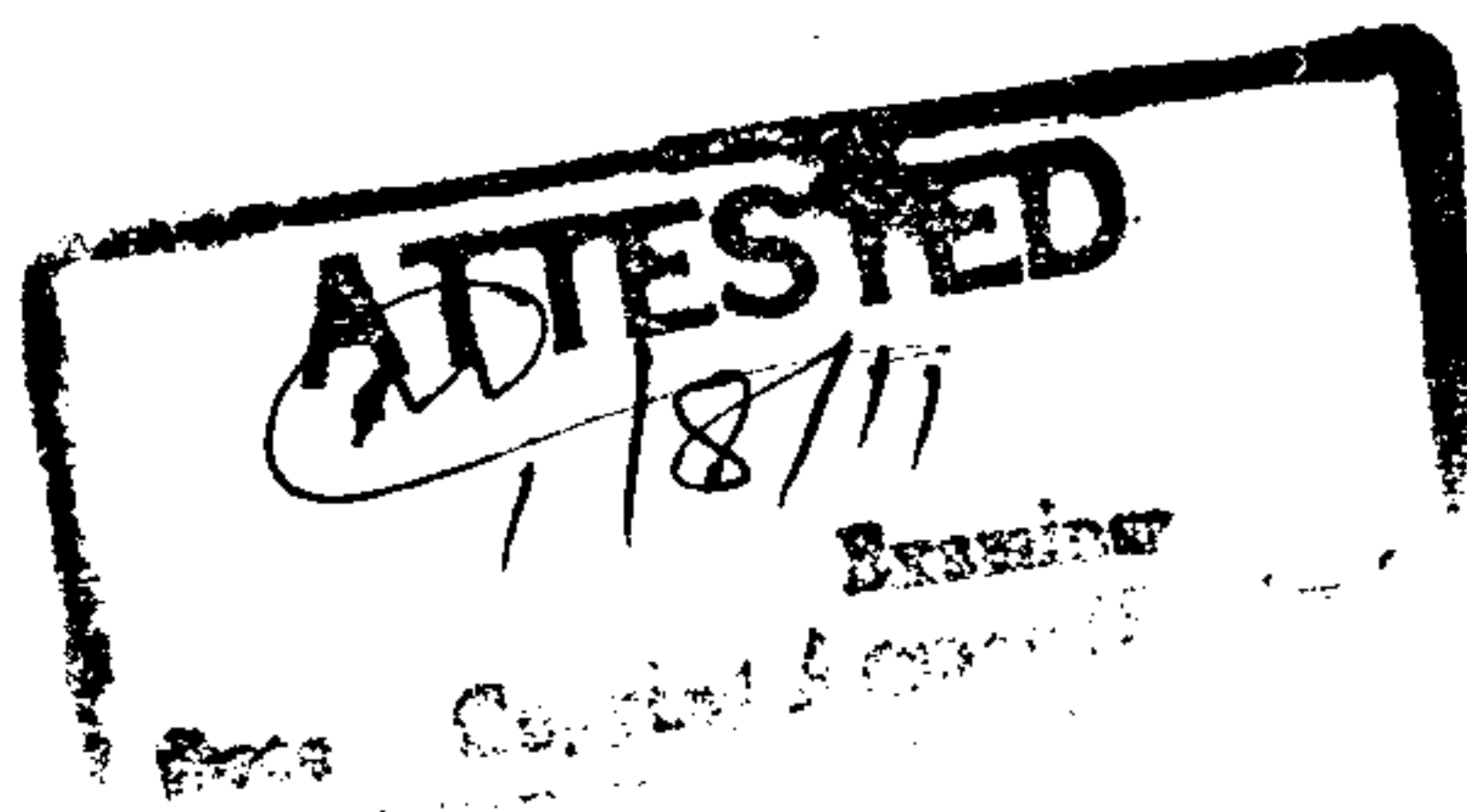




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there are four directors i.e. A 2 to A5. Company accused had sent letter undated which was received in the office of SEBI on July 3, 1998 stating that Smt. Shyam Lata and Ms. Kiran Waranwal i.e. A4 & A5 had ceased to be director w.e.f. December 31, 1997 and intimation in this regard was sent to the office of Registrar of the Companies. SEBI had filed the form-32 in this regard. In other words w.e.f. January 1, 1998 there were only two directors in the company i.e. A 2 & A 3. Needless to say that there cannot be less than two directors at any point of time.

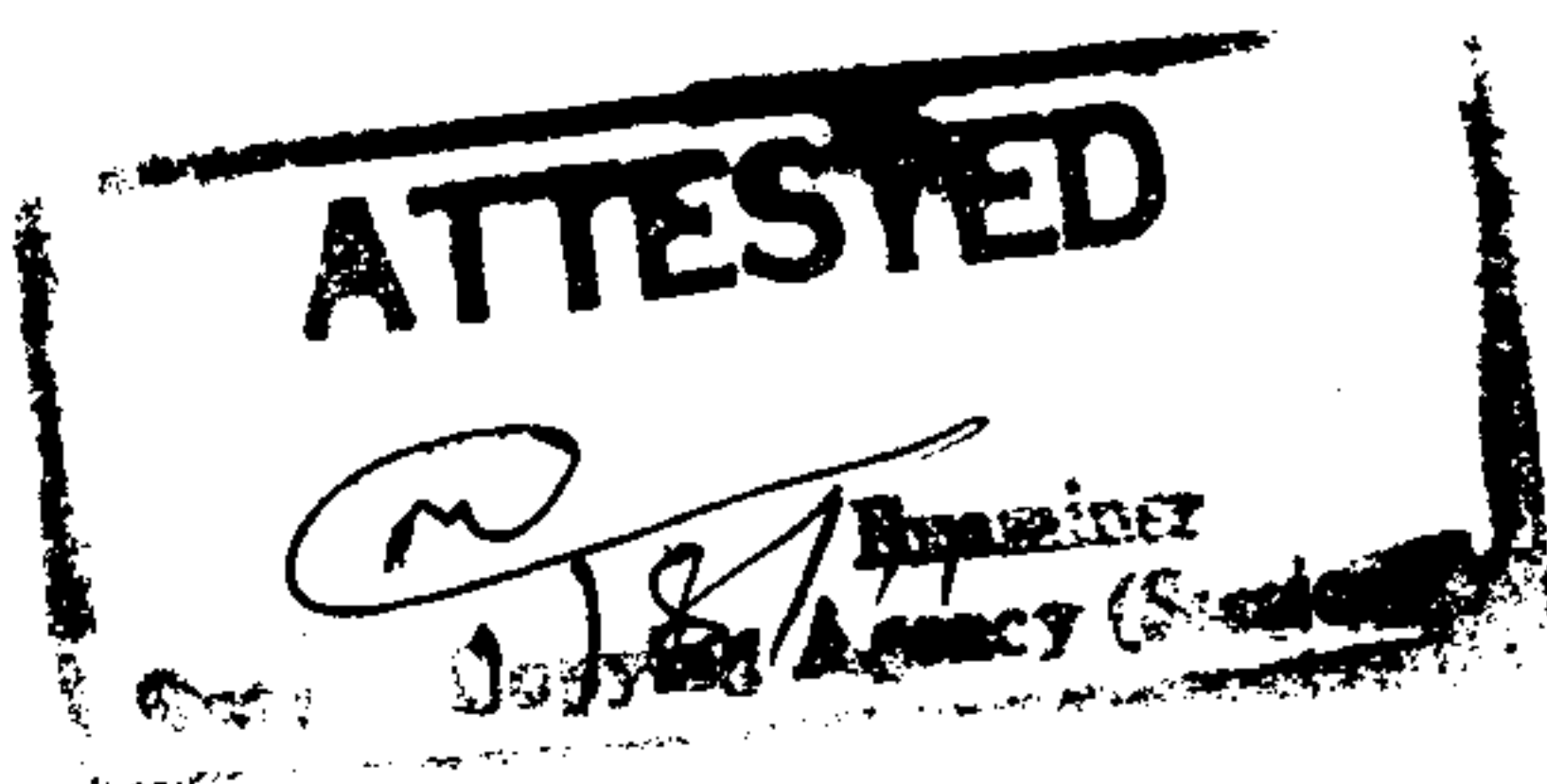
26. A3 took the plea that he had resigned from directorship on February 28, 1998 and gave his resignation to Sh. Pritam Singh, Managing Director of the company accused, which is exhibited as Ex. DW1/A. Perusal of the Ex. DW1/A reveals that it is the original document and allegedly bears the signature of one person named Pritam Singh who signed on behalf of M/s Papkar Forests (India) Ltd. If A3 had submitted his resignation to the Board of Directors on February 28, 1998, A3 could not have been in the possession of original resignation letter rather he should have been in the possession of office/copy photocopy of his resignation letter but it is not so. Scrutiny of this document further reveals that it bears the rubber stamp of company accused which reads "for Papkar Forests (India) Ltd." whereas the name of company accused is "Pepkar Forests (India) Ltd." It is highly unbelievable





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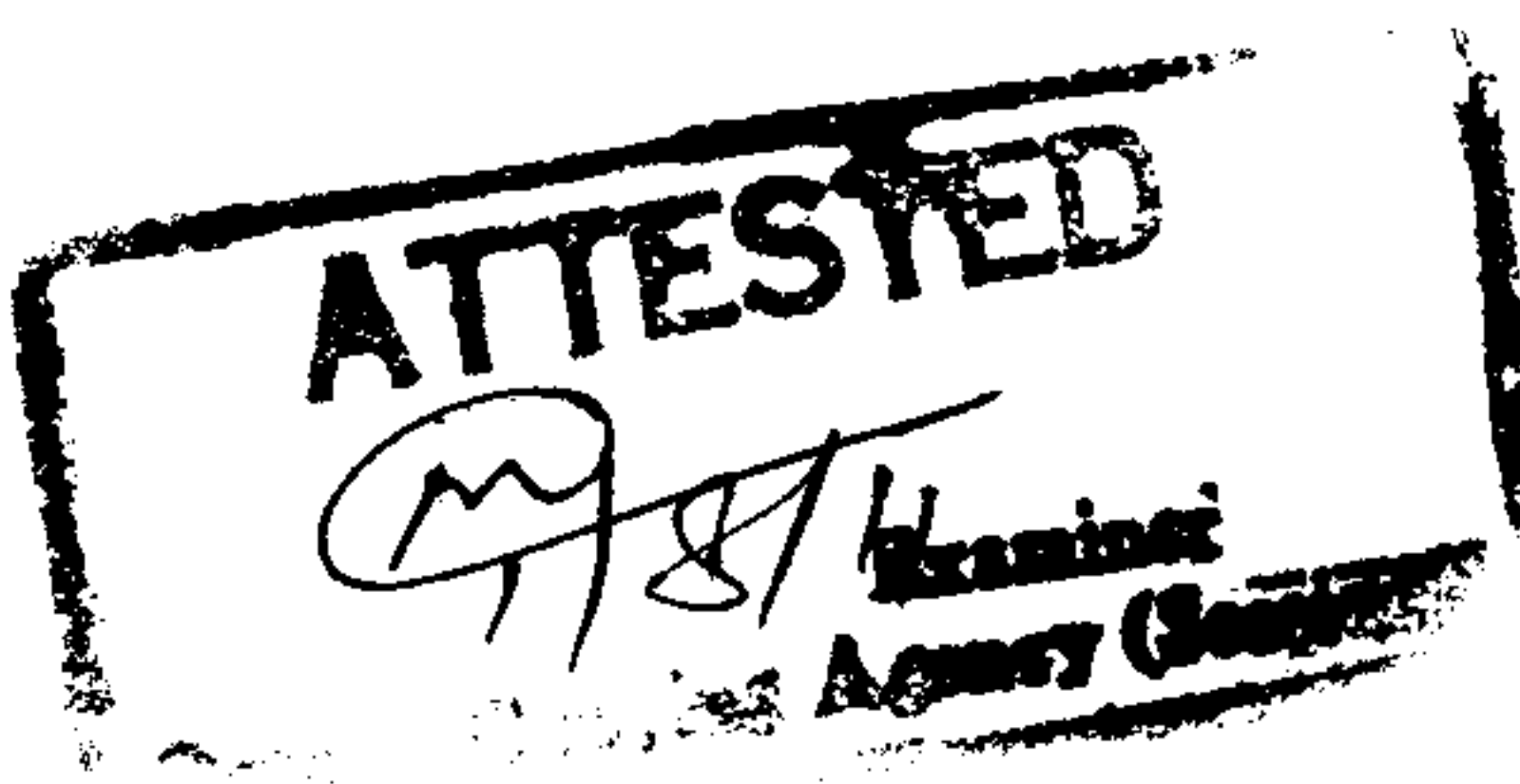
28. Learned counsel appearing on behalf of accused strongly relied upon the judgement titled as *Virender Kumar Versus SEBI (unreported)* wherein Hon'ble High Court pleased to quash the proceeding on the ground that the appellant had resigned much prior to 2000 when the prosecution was launched. In that case appellant had filed form 32 at the very initial stage. In the present case prosecution was launched against A3 as well as other accused in December 2003, despite that he did not deem it appropriate to file form 32 at the earliest and preferred to file only in 2011 and form 32 reveals that he intimated the Registrar of Companies only in February, 2010. Moreover, in the instant case resignation letter is not beyond the shadow of doubt.
29. Learned counsel also placed reliance on judgment titled as *Reshma Verma Vs SEBI, 157 (2009) Delhi Law Times 417*. Perusal of the judgment reveals that the facts of the said case were totally different from the facts of the case in hand as in the said case appellant was merely a share holder and was not holding any position in the company and she was in service at the relevant point so she could not otherwise actively participated in the affairs of the company. Thus, the said judgement is not helpful to the accused in any manner.
30. Learned counsel heavily relied upon judgment titled as





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Manish Kant Aggarwal Vs National Agricultural Cooperative Marketing Federation of India Ltd (NAFED) & Anr. reported in 156 (2009) DLT 415 wherein it was held that the resignation of the director is effective from the date he submits it, because of his intention to resign and it is for the company to comply with formalities as required under Section 302 and 303 of Companies Act. No doubt, once resignation is accepted, it would be effective from the date when it was submitted to the Board of Directors but the onus is upon the accused to establish that he had submitted his resignation to the Board of Directors and the same was accepted by the Board of Directors. Once, it is accepted, resignation would be effective from the date of its submission. But in this case, A3 failed to establish beyond doubt that he had submitted his resignation on February 28, 1998. As already discussed, resignation letter exhibited as Ex.DW1/A raises several doubts over its authenticity and genuineness. In the absence of any concrete evidence, it cannot be held that he had submitted his resignation on 28.02.1998, specially, when there was only two directors in the company accused i.e. A 1 and A3 himself. He had not even produced the register of the company showing that the change in the directorship was reflected in the register, which company was supposed to maintain under Companies Act.

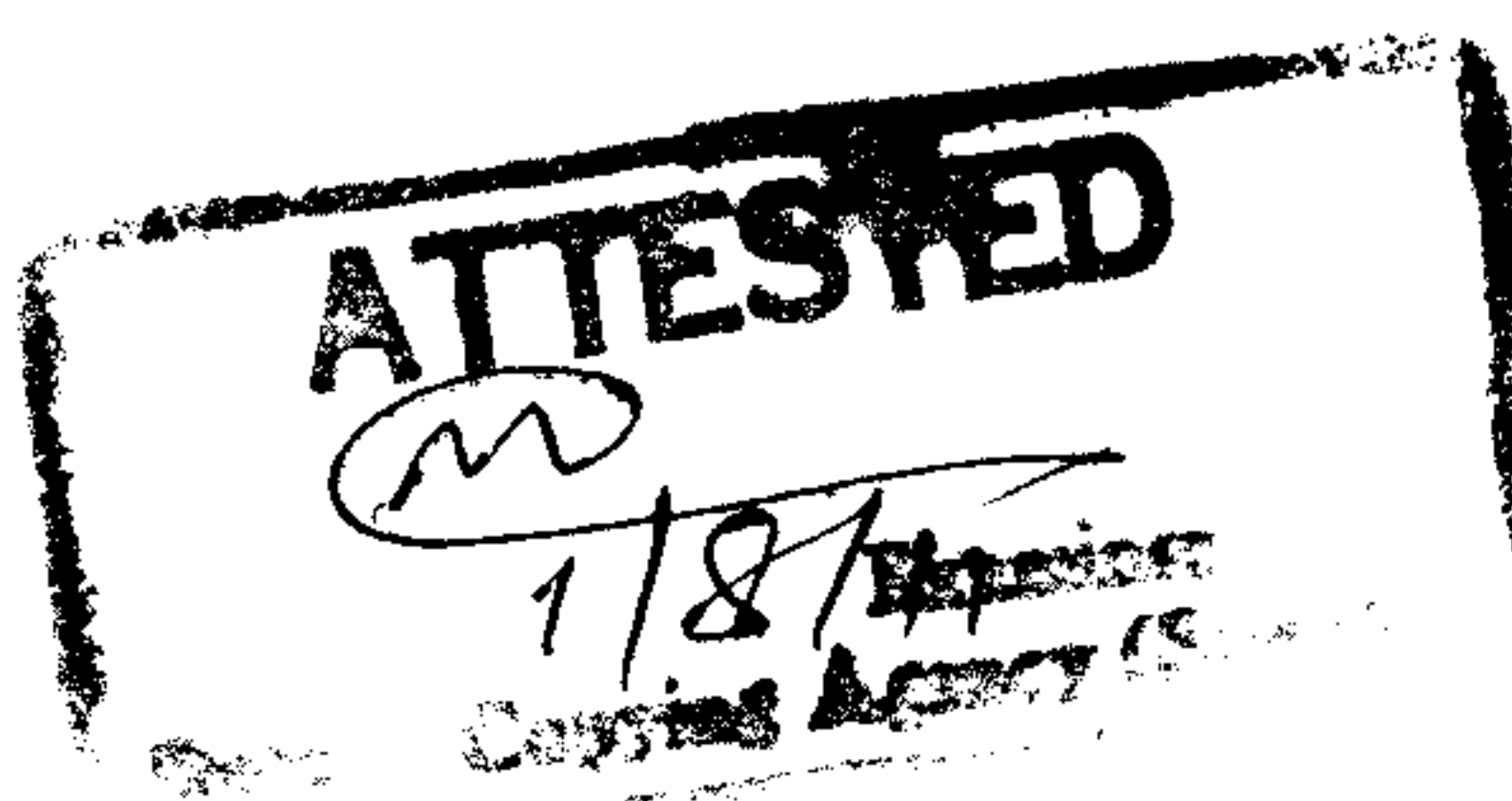




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31. Counsel appearing for accused also relied upon judgement titled as *National Small Industries Versus Harmeet Singh Paintal & Anr.* passed by the Hon'ble Supreme Court in criminal appeal no. 320-336/2010 (Arising out of S.L.P. (Crl.) Nos. 445-461/2008). The said judgment is based on the earlier judgement of Hon'ble Supreme Court titled as *SMS Pharmaceuticals Ltd Versus Neeta Bhalla & Anr.* 2005(8) SCC 89 which was based on the earlier judgement of the Hon'ble Supreme Court in case *N. Rangachari Vs BSNL*, 2007 Crl. L.J 2448. The said judgments were discussed by the High Court of Delhi in case *Ankur Forest & Project Development India Ltd & Ors Vs SEBI in Crl. Appeal No. 220/2010* decided on 8th February, 2011. The relevant paras of judgement are 14, 15 16. The same are as follows:

"..... I find no merit in the contention of the learned defence counsel that no role has been attributed to the Appellants No. 2 to 5. The Appellants were the promoters and Directors thus, the responsibility of day to day functioning of the Company as has been proved by the complainant witnesses from the memorandum and articles of association is also on them. The Hon'ble Supreme Court in *SMS Pharamaceuticals Ltd. Vs Neeta Bhalla and Others*, 2005 (8) SCC 89 held that a clear, unambiguous and specific allegation against a person impleaded as





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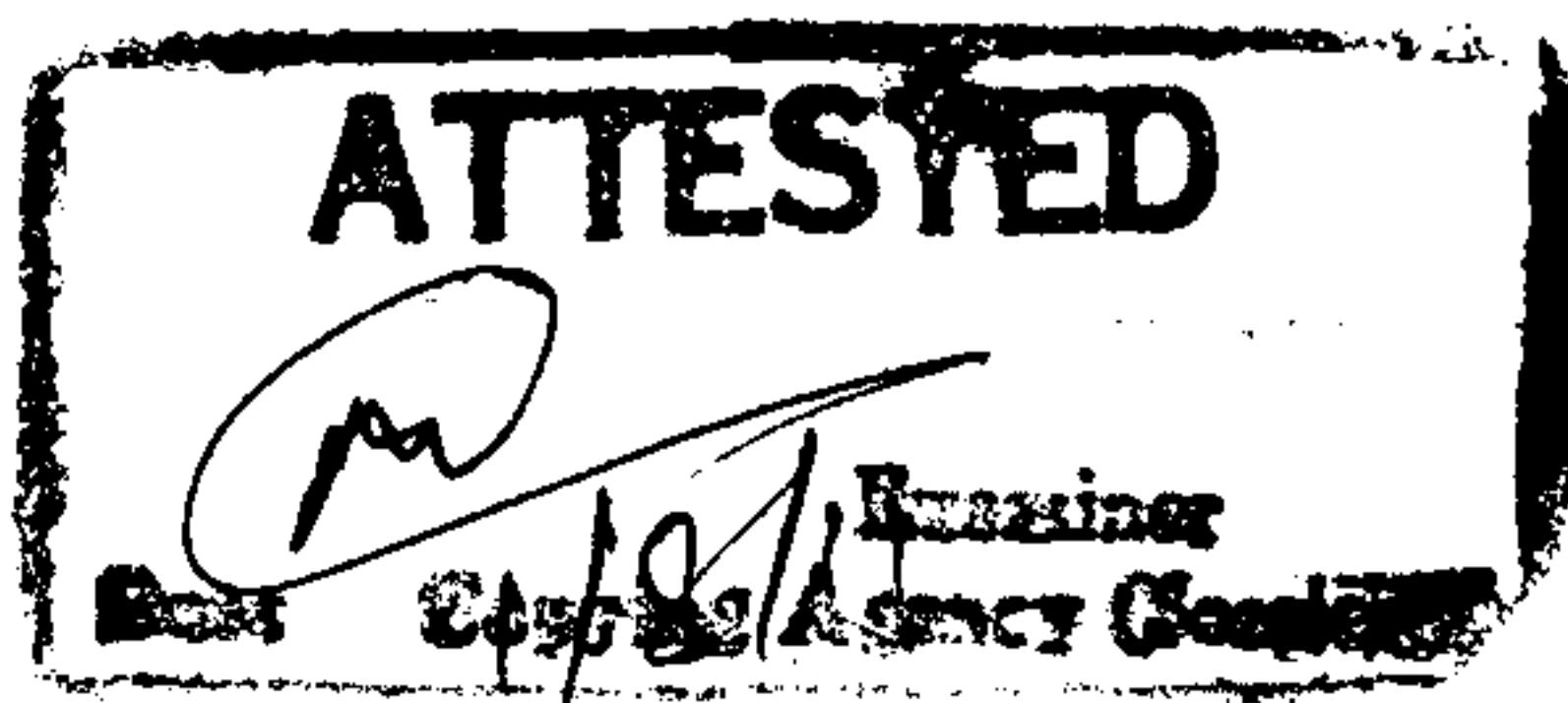
an accused that he was in charge of and responsible to the company in the conduct of its business at the material time when the offence was committed is sufficient. This issue was also considered by the Hon'ble Supreme Court in N. Rangachari Vs BSNL, 2007 CrI. L.J. 2448, wherein it was held:

"13. A Company, though a legal entity, cannot act by itself but can only act through its directors. Normally, the Board of Directors act for and on behalf of the company. This is clear from Section 291 of the Companies Act which provides that subject to the provisions of that Act, the Board of Directors of a Company shall be entitled to exercise all such powers and to do all such acts and things as the company is authorized to exercise and do. Palmer described the position thus:

"A company can only act by agents, and usually the persons by whom it acts and by whom the business of the company is carried on or superintended are termed directors....."

It is further stated in Palmer that:

"Directors are, in the eye of the law, agents of the company for which they act, and the general principles of the law of principal and agent regulate in most





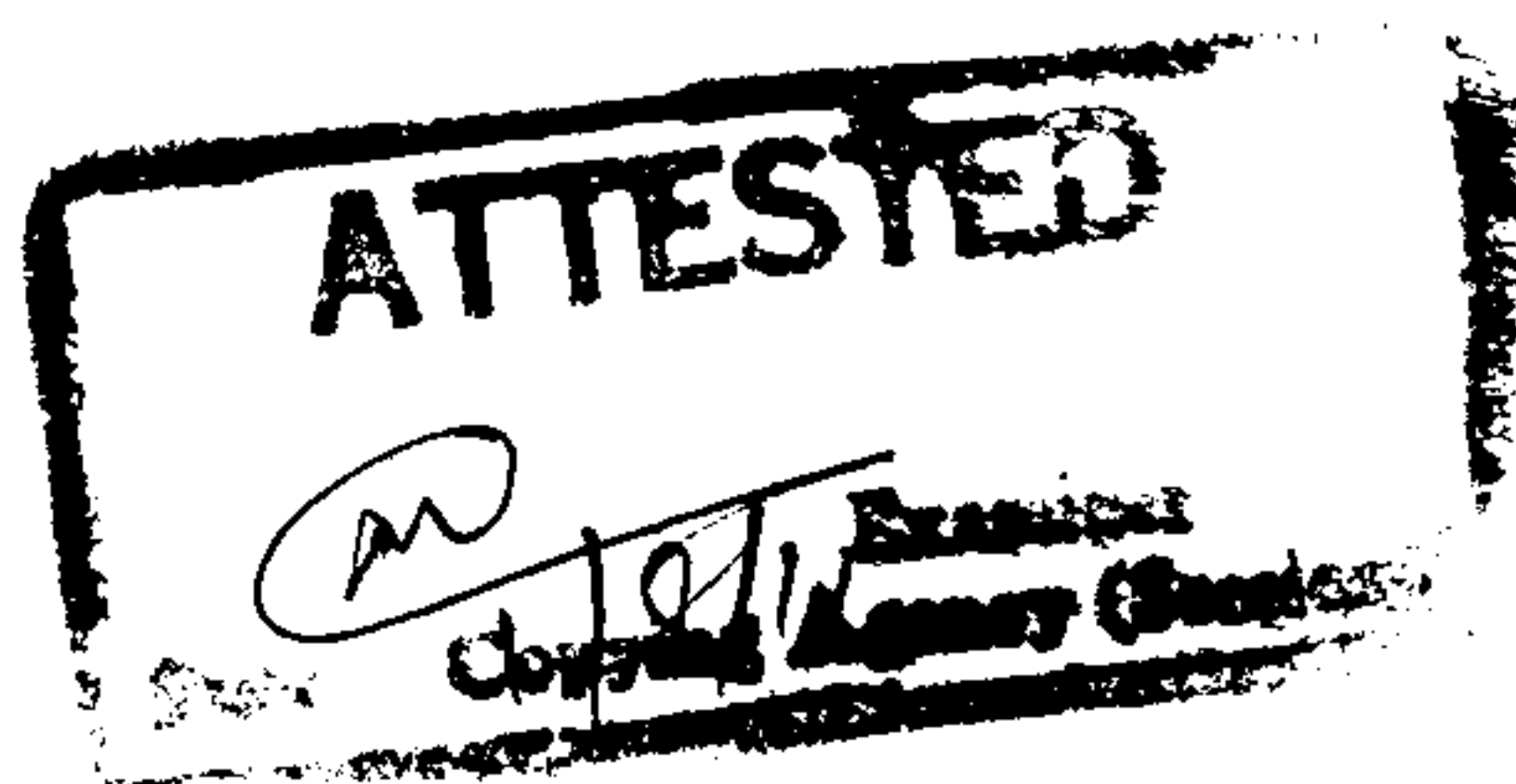
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respects the relationship of the company and its directors."

The above two passages were quoted with approval in R.K. Dalmia & Ors v The Delhi Administration [(1963) 1 SCR 253 at page 300]. In Guide to the Companies Act by A. Ramaiya (Sixteenth Edition) this position is summed up thus:

All the powers of management of the affairs of the company are vested in the Board of Directors. The Board thus becomes the working organ of the company. In their domain of power, there can be no interference, not even by shareholders. The directors as a board are exclusively empowered to manage and are exclusively responsible for that management."

Therefore, a person in the commercial world having a transaction with a company is entitled to presume that the directors of the company are in charge of the affairs of the company. If any restrictions on their powers are placed by the memorandum or articles of the company, it is for the Directors to establish it at the trial. It is in that context that Section 141 of the Negotiable Instrument Act provides that when the offender is a company, every person, who at the time when the offence was committed was in charge of and

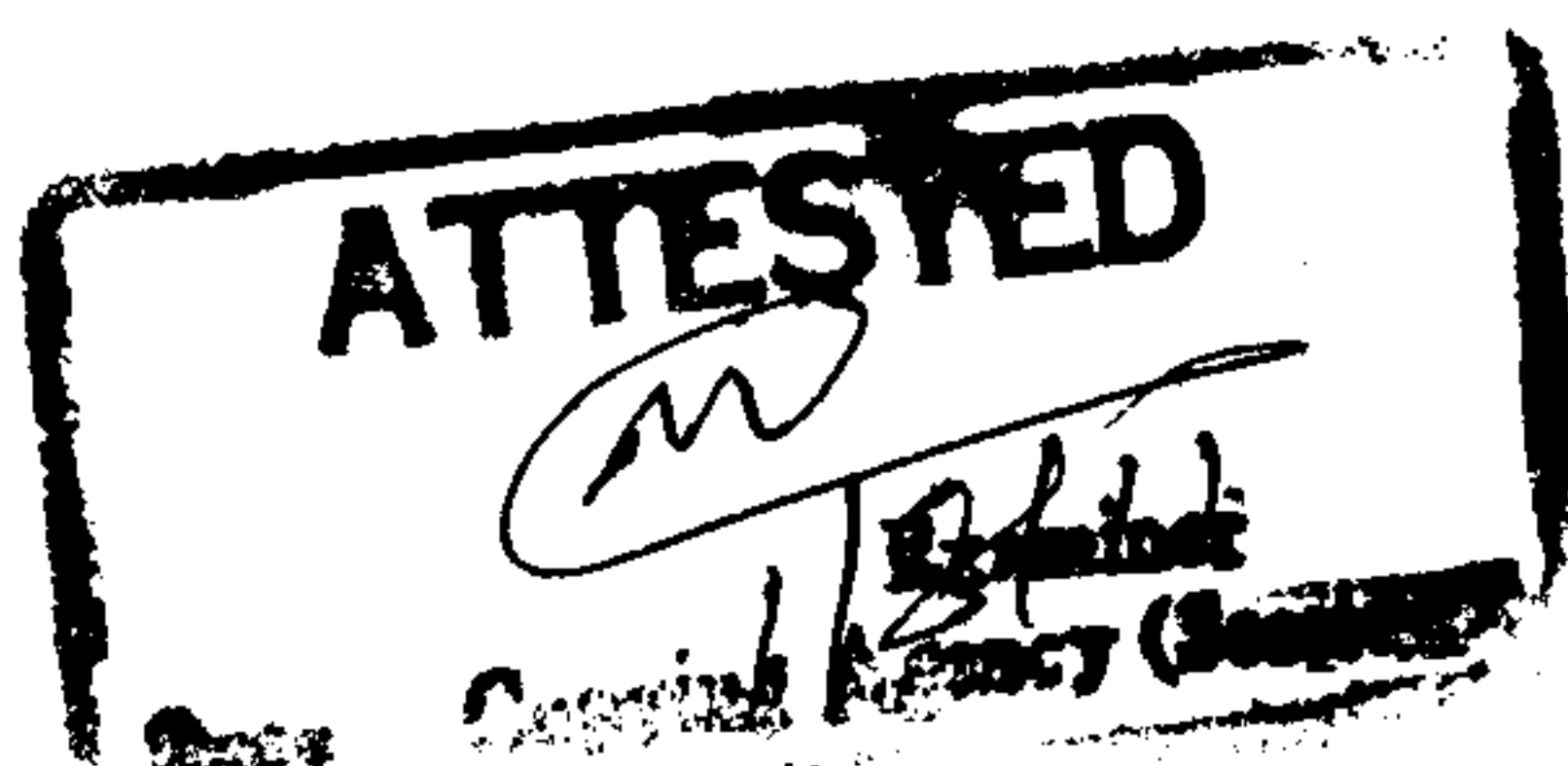




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was responsible to the company for the conduct of the business of the company, shall also be deemed to be guilty of the offence along with the company. It appears to us that an allegation in the complaint that the named accused are Directors of the company itself would usher in the element of their acting for and on behalf of the company and of their being in charge of the company. In Gower and Davies Principles of Modern Company Law (Seventh Edition), the theory behind the idea of identification is traced as follows:

" It is possible to find in the cases varying formulations of the under-lying principle, and the most recent definitions suggest that the courts are prepared today to give the rule of attribution based on identification a somewhat broader scope. In the original formulation in Lennard's Carrying Company case Lord Haldane based identification on a person ' who is really the directing mind and will of the corporation, the very ego and centre of the personality of the corporation'. Recently, however, such an approach has been castigated by the Privy Council through Lord Hoffmann in Maridian Global case as a misleading "general metaphysic of companies". The true question in each case was who as a matter of construction of the statute in question, or presumably other rule of



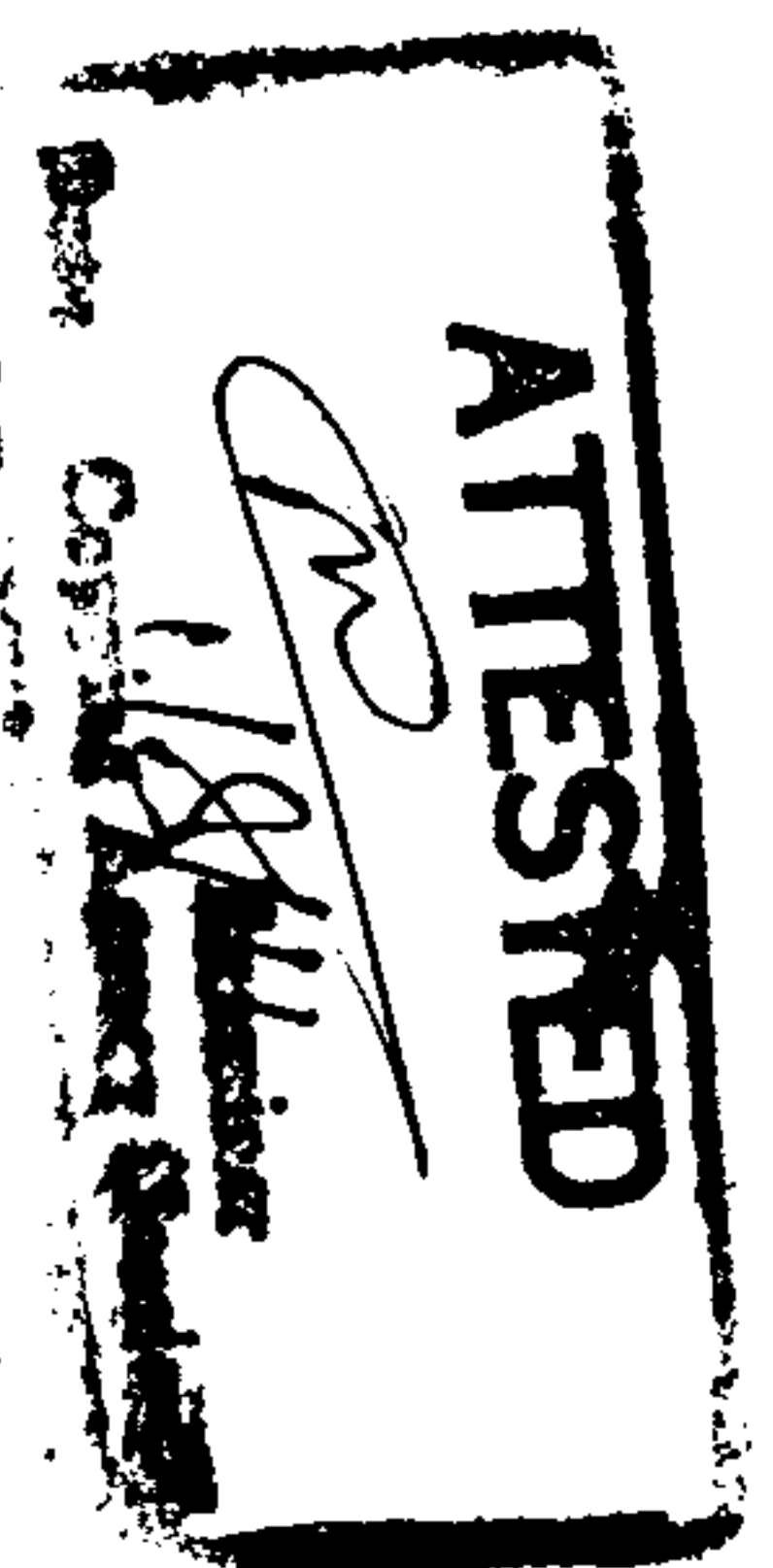


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law, is to be regarded as the controller of the company for the purpose of the identification rule.

But as has already been noticed, the decision in *S.M.S. Pharmaceuticals Ltd.* (Supra) binding on us, has postulated that a director in a company cannot be deemed to be incharge of and responsible to the company for the conduct of his business in the context of Section 141 of the Act. Bound as we are by that decision, no further discussion on this aspect appears to be warranted.

14. A person normally having business or commercial dealings with a company, would satisfy himself about its creditworthiness and reliability by looking at its promoters and Board of Directors and the nature and extent of its business and its memorandum or articles of association. Other than that, he may not be aware of the arrangements within the company in regard to its management, daily routine, etc. therefore, when a cheque issued to him by the company is dishonoured, he is expected only to be aware generally of who are in charge of the affairs of the company. It is not reasonable to expect him to know whether the person who signed the cheque was instructed to do so or whether he has been deprived of his authority to do so when he actually



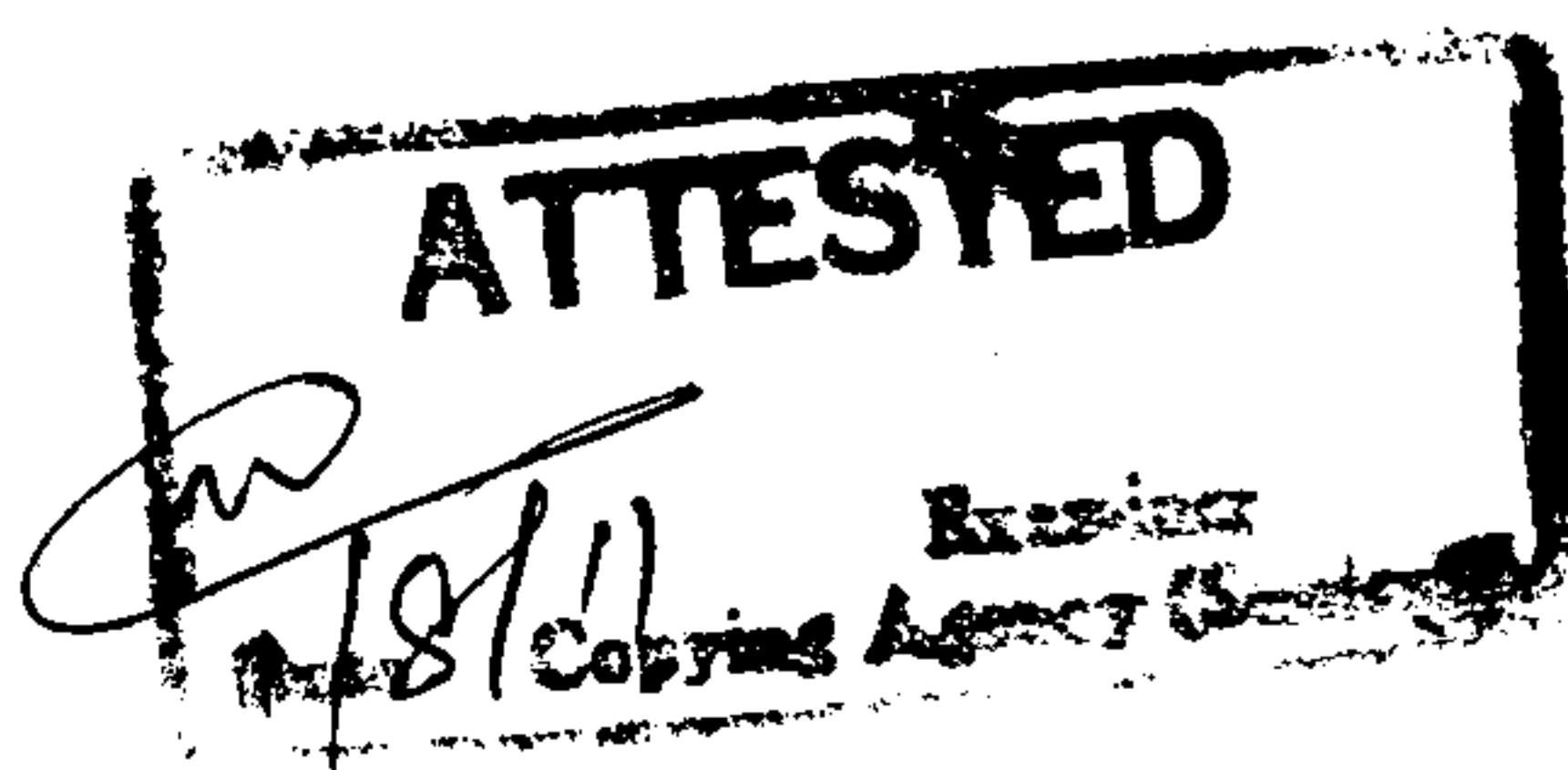


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signed the cheque. Those are matters peculiarly within the knowledge of the company and those in charge of it. So, all that a payee of a cheque that is dishonoured can be expected to allege is that the persons named in the complaint are in charge of its affairs. The directors are prima facie in the position.

15.....

16. In the light of the ratio in S.M.S. Pharmaceuticals Ltd. what is to be looked into is whether in the complaint, in addition to asserting that the appellant and another are the Directors of the company, it is further alleged that they are in charge of and responsible to the company for the conduct of the business of the company. We find that such an allegation is clearly made in the complaint which we have quoted above. Learned Senior Counsel for the appellant argued that in Saroj Kumar Poddar case this Court had found the complaint unsustainable only for the reason that there was no specific averment that at the time of issuance of the cheque that was dishonoured, the persons named in the complaint were in charge of the affairs of the company. With great respect, we see no warrant for assuming such a position in the context of the binding ratio in S.M.S. Pharmaceuticals Ltd. and in view of the





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position of the Directors in a company as explained above".

15:

Thus, testing of the facts of the present case in light of the ratio laid down, it would be relevant to reproduce the relevant portion of the complaint filed by the respondent which is duly exhibited and proved by the statement of CW1 Versha Aggarwal:

" In view of the above, it is charged that the Accused no. 1 has committed the violation of Sec. 11B, 12(1B) of Securities and Exchange Board of India Act, 1992 read with Reg. 5(1) read with Reg. 68 (1), 68 (2), 73 and 74 of the Securities and Exchange Board of India (Collective Investment Schemes) Regulations, 1999 which is punishable under Section 24(1) of Securities and Exchange Board of India Act, 1992. The Accused no. 2 to 6 are the directors and /or persons in charge of the responsible to the Accused No. 1 for the conduct of its business and are liable for the violations of the Accused No.1, in terms of Section 27 of Securities and Exchange Board of India Act, 1992".

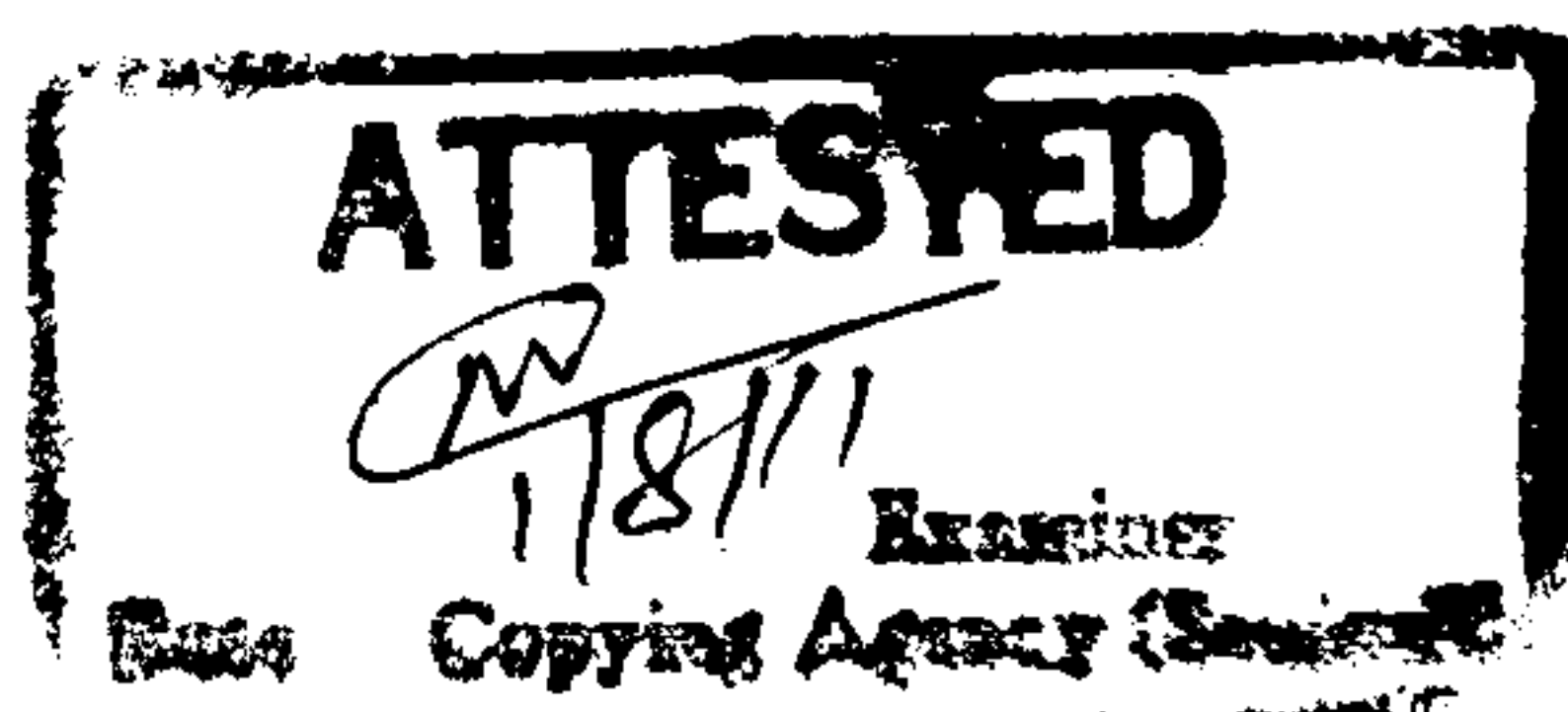
Besides CW2 in her testimony has stated: "The non-compliance of the SEBI directions and the violations of Section 12 (1B) of the Act and the Regulations is attributable to accused





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nos. 2 to 6, who are the directors of accused No.1 company. Accused No.1 company did not get the scheme registered with SEBI prior to mobilization of funds thereunder. Till date accused no. 1 company has not applied for registration nor any provisional registration was granted to it. The accused No. 1 company or its directors accused No. 2 to 6 have not filed any winding up and repayment report till now. The accused No. 1 company and its directors accused No. 2 to 6 were intimated regarding obligations under SEBI regulations and directions passed by Chairman SEBI through public notice dated 10.12.1999 and 07.12.2000, which was published on 14.01.2001 which are Ex. CW2/2 and Ex. CW2/3 respectively". Thus the testimony of this witness on this aspect has gone unchallenged. In response to the question No. 2 that the Appellant No.1 that is the company had filed the details including the list of Directors, funds mobilized and memorandums and articles exhibited as Ex. CW1/1, the Appellant No. 2 to 5 in their statements under Section 313 Cr.PC have stated that we did not file this information. They have shown ignorance even about the audited balance-sheets etc. However, the defence witness DW1 Tarsem Saini has stated in his testimony that the company was run by the appellant No.2 to 5 and Hemant Shama





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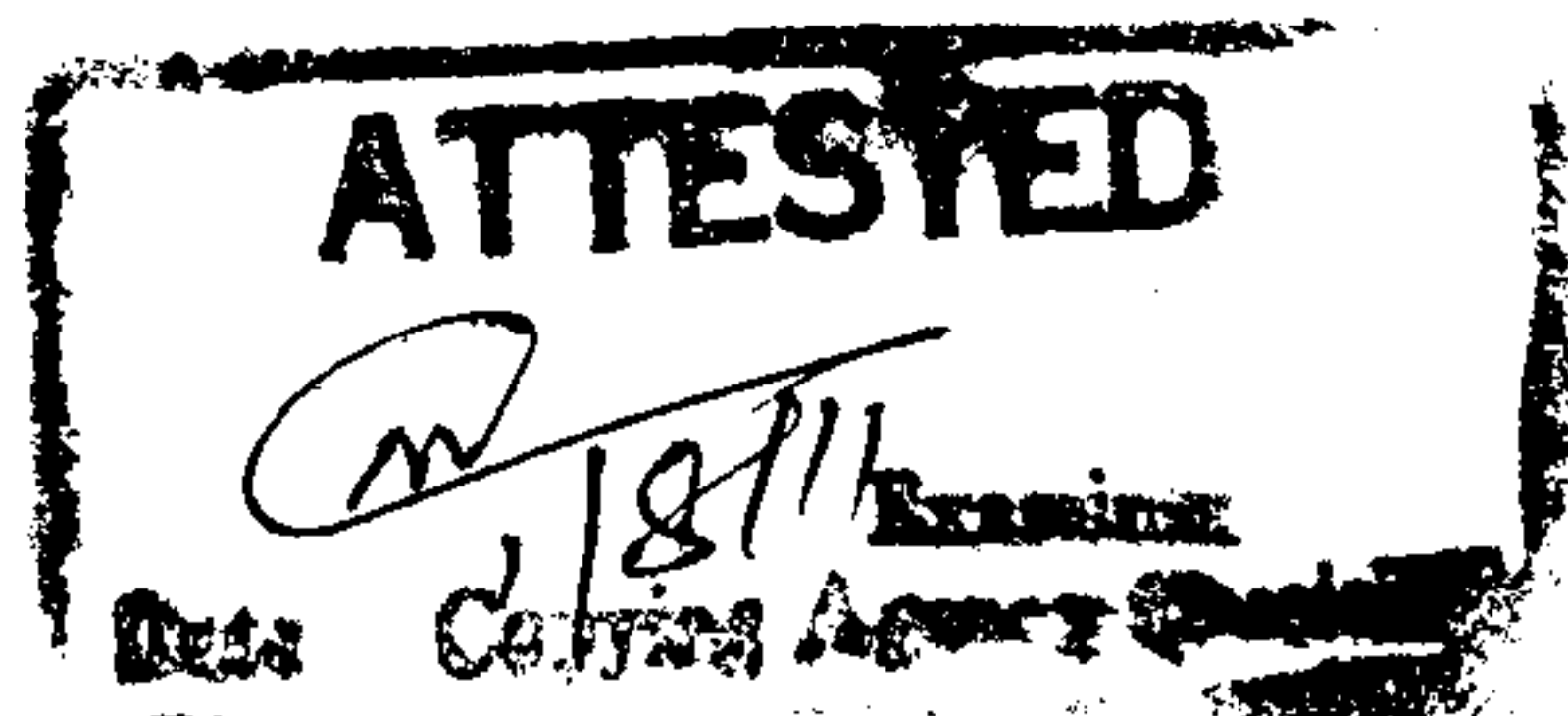
as directors. The relevant part of the testimony of DW1 reads as under:

".....Accused no.1 company had mobilized only Rs. 1 to 1.5 lac rupees and the same stand repaid. It is wrong to suggest that the accused no. 1 company has received Rs. 34,79,151/- as investment. I was the director of the accused company apart from me Sh. Hemant Sharma, Sh. Rajbir Singh, Sh. Jagjit Singh, Sh. Mohan Lal Saini were also directors of the accused no. 1 company. I had stated that our company started few months before the filing of the petition for winding up. It is correct to suggest that the accused no. 1 company was incorporated on 22.09.1995 as per the certificate of incorporation however the commencement of business was from 22.08.1996. We started business in the year 1998 Ex. CW1/1 was not sent by the accused company. Ex. CW1/2 was also not sent by the accused company. I have taken oath therefore, I am not lying and I am not deposing falsely. It is wrong to suggest that the accused company was would wound up on account of non-payment to all the investors. The accused company had not filed winding up and repayment report with the same."

16. The testimony of the complainant witnesses along with the relevant

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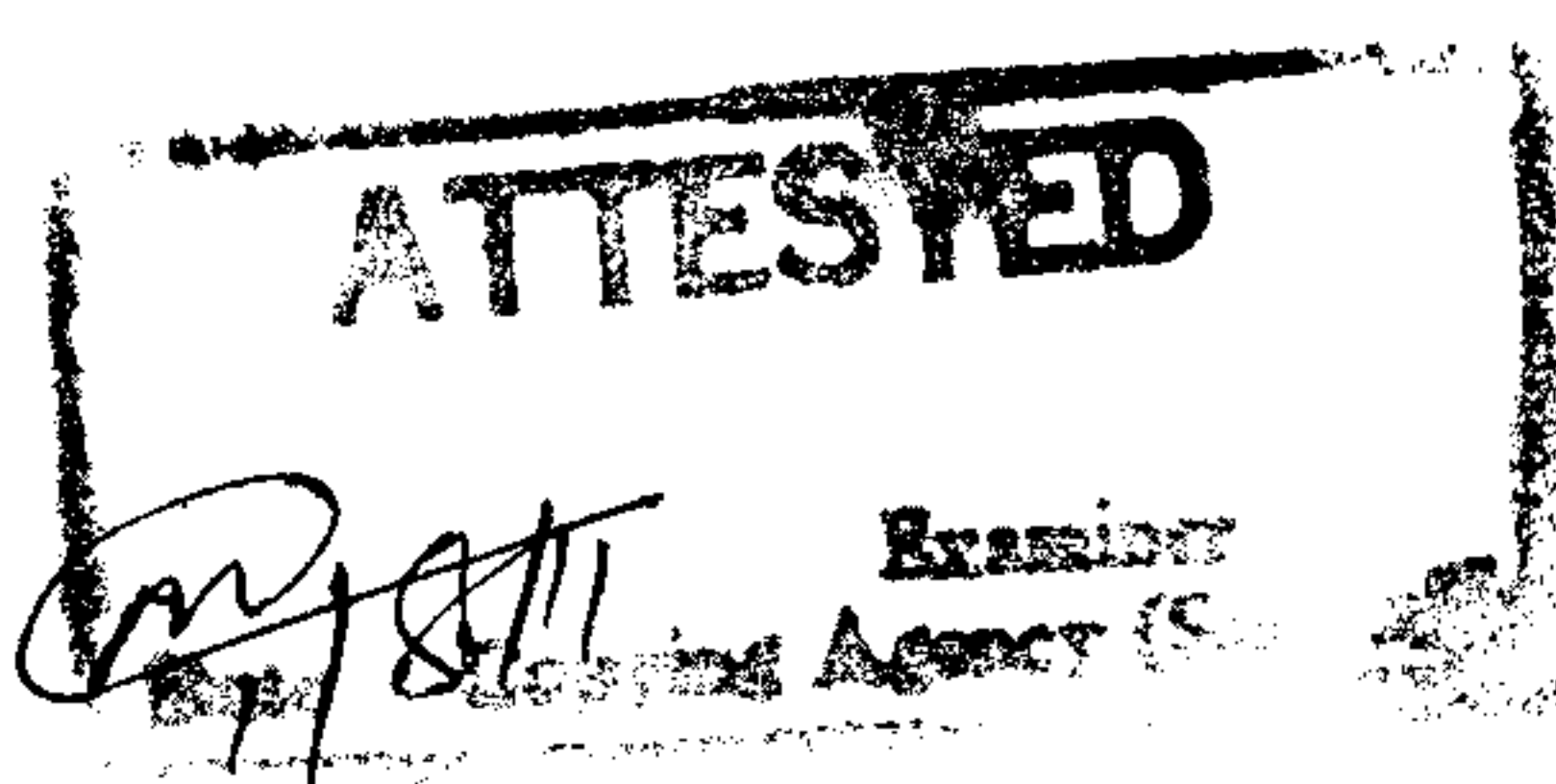




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documents duly exhibited, together with the testimony of defence witness Sh. Tarsem Saini and contradictory statements given by the Appellants under Section 313 Cr.P.C. It can be safely adduced that the case of the contention of the learned counsel for the Appellant is liable to be dismissed, as there is sufficient evidence on record i.e. the complaint, the memorandum of article of associations and the statement of DW1 Tarsem Saini which is cogent and sufficient to show that the time when the violation of SEBI (CIS) Regulation was carried on by the Accused No.1 company, the Appellant Nos. 2 to 5 herein were the persons in-charge and responsible for the affairs of the company.

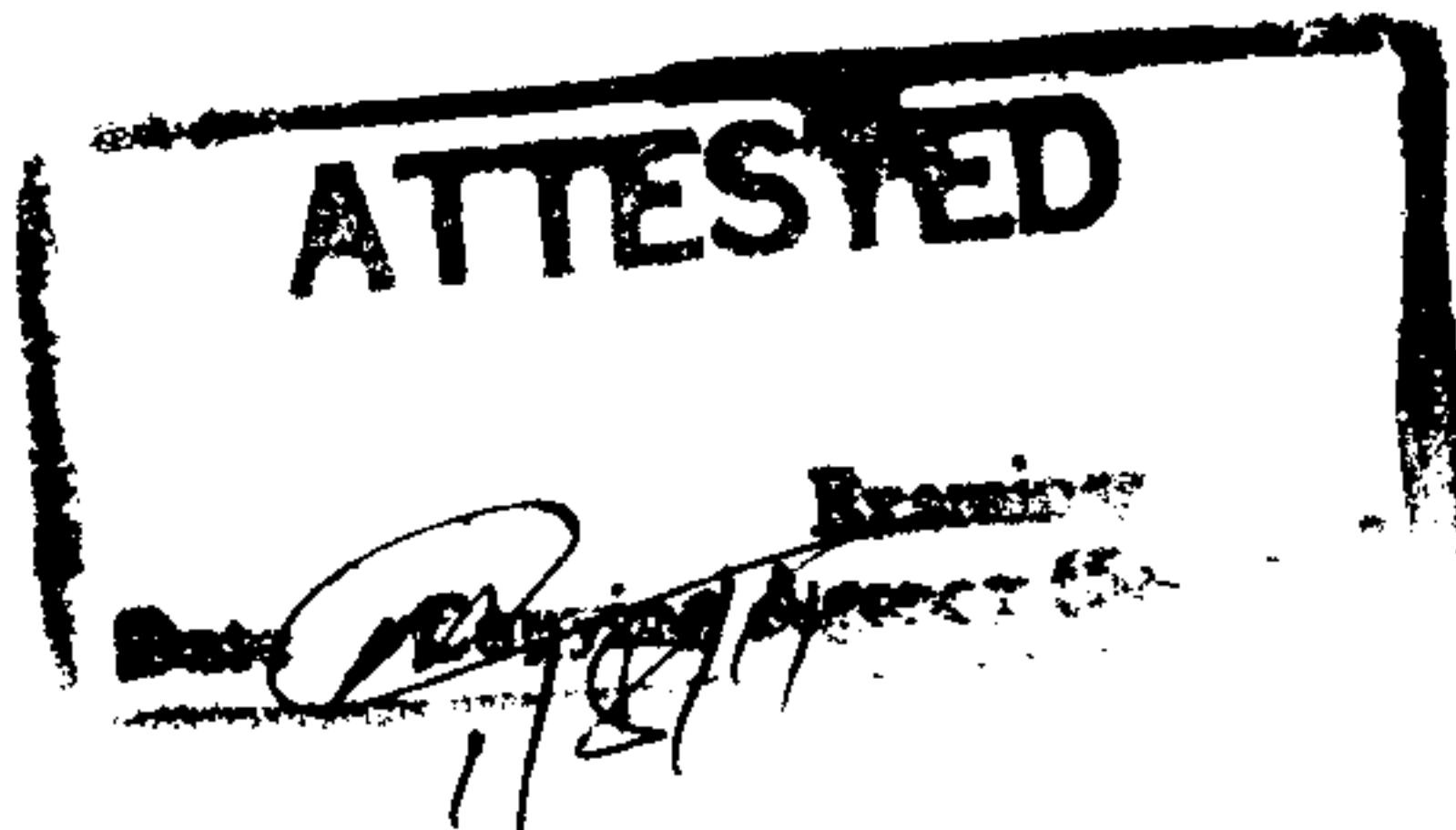
32. In the light of above judgments, the facts of the present case will be examined to find out whether A 3 was in-charge and responsible to, the conduct of company accused or not. CW1, AGM of SEBI deposed that the company accused had mobilized funds of ₹ 19,11,220/- and furnished the information pertaining to the promises and assurances made in the scheme, name and details of the promoters and sponsors of the company accused with the SEBI along with the other documents and further deposed that as per the information provided by the company, Sh. Pritam Singh





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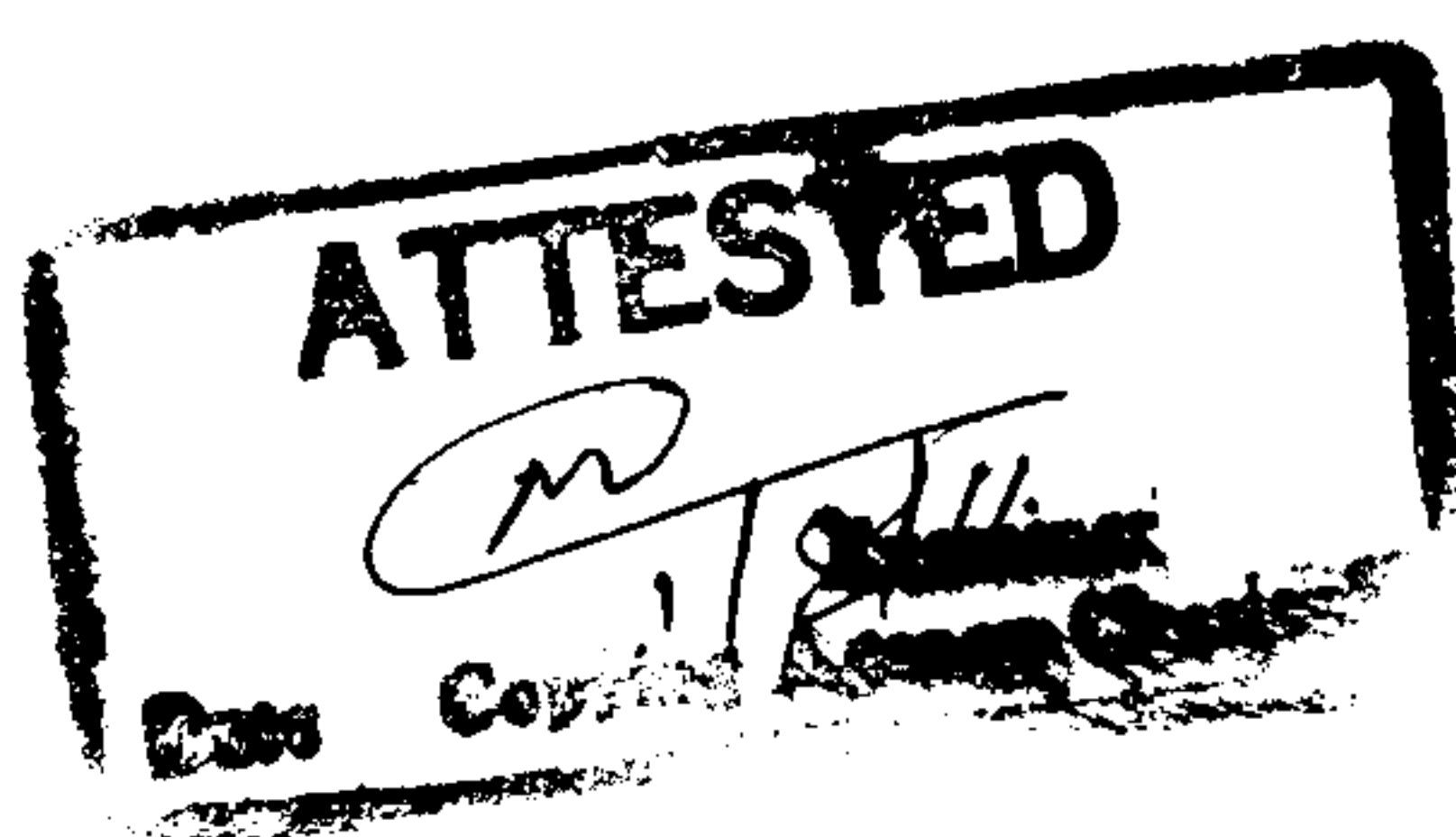
(A2), Mudrika Prasad Yadav (A3), Shyam Lata (A4), Kiran Waranwal (A5), Saroj Singh and other were the promoters of the company accused. He further deposed that vide its letter dated May 27, 1998, he informed the SEBI that Sh. Pritam Singh (A2), Mudrika Prasad Yadav (A3), Shyam Lata (A4), Kiran Waranwal (A5) were the directors of the company accused and also sent the copy of memorandum and articles of association of company accused wherein also the name of said persons were mentioned as first directors. CW1 further deposed that neither company accused nor the persons in-charge of its day to day affairs i.e. A2 to A 5 complied with the provision of CIS Regulation despite notice issued by SEBI under Section 11B of the Act and further stated that the contents of directions issued by the Chairman of SEBI were served upon company accused and its director through public notice dated December 7, 2000 which was published in Hindustan Times on January 14, 2001 and also in vernacular and copy of which is exhibited as Ex. CW1/20. SEBI also collected the information from ROC about the directors and persons in-charge of the company accused and ROC also informed the SEBI vide its letter dated July 16, 2009 that A 3 along with A 2 and A 4 were the directors of the company accused. In his cross examination CW1 admitted that no correspondence or letter were sent to SEBI under the signature of A 3 and further stated that he cannot admit or deny whether as per memorandum and articles of

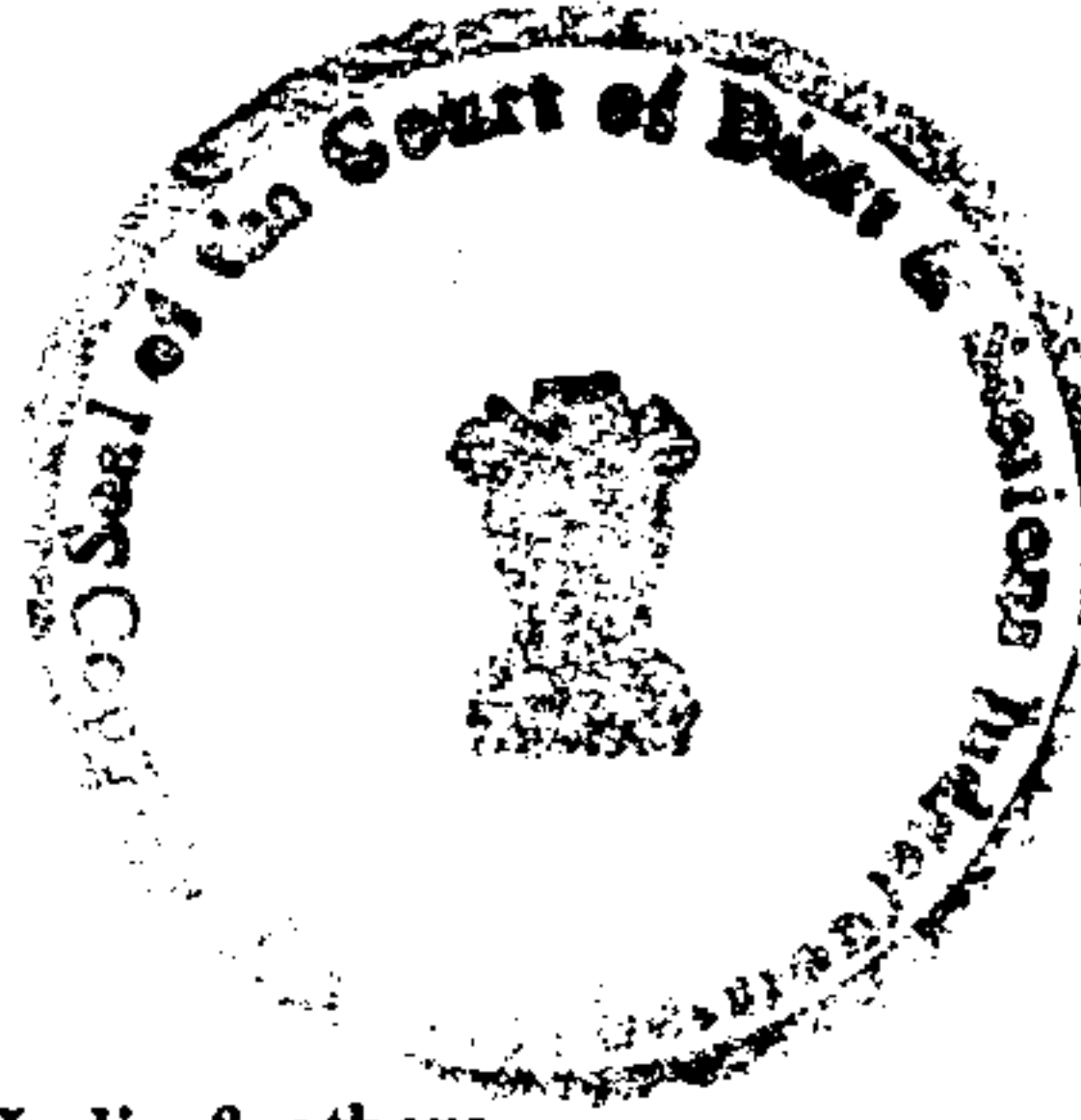




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association of company accused, A 3 was not responsible for the day to day affairs of the company. During the cross examination, accused tried to make out a defence that A3 was not in-charge of, and responsible to, the company accused for the conduct of its business as no letter was addressed to the SEBI under the signature of A3. It is admitted case of the A3 that A2 Pritam Singh was the Managing Director of the company accused, thus, A 2 was supposed to make correspondence on behalf of company accused. Merely fact that letters sent to the SEBI were signed by A2 does not mean that A3 was not the in-charge of and responsible to, the company accused for the conduct of its business. Because all directors of the company accused were not supposed to sign those letters. A2 being the Managing Director of the company accused signed the letters on behalf of the company accused. As already discussed that no individual director was competent to take the decision to mobilize funds from general public through CIS, it was the decision of the Board of Directors of the company accused in which A 3 was one of the directors. Since, the funds were mobilized as per the decision of the Board of Directors, the directors who participated in the process of taking said decision were in-charge of and responsible to, the said business of the company accused. Moreover, it is common fact that at the time of investing the amount in a particular company, investors firstly look the name of its promoters and directors, only their reputation

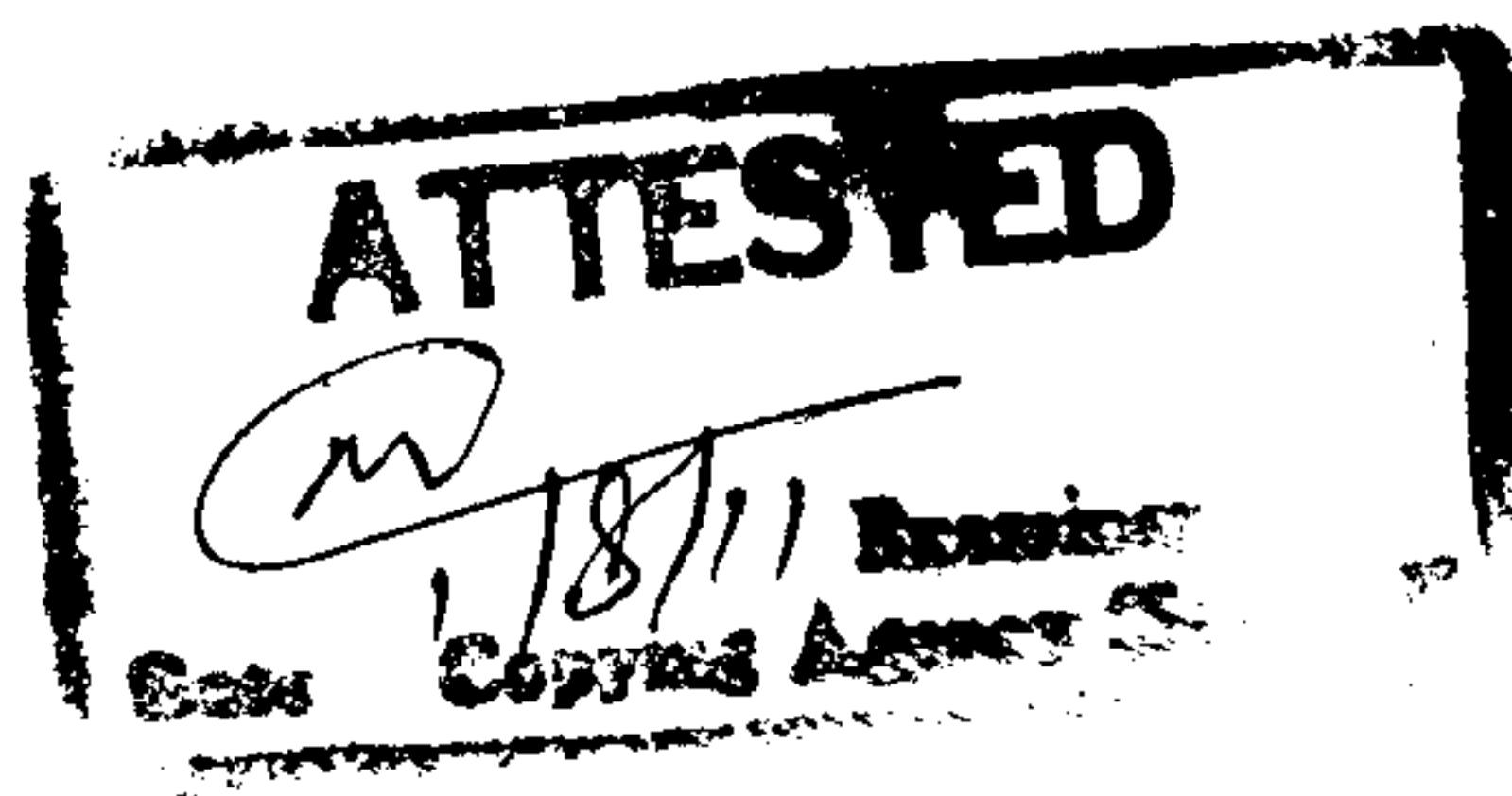




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induces investors to invest in their company. Thus, A3 cannot be allowed to take plea that since he was not looking after the day to day affairs of the company accused, he was not liable for that decision. Under Section 27 of the SEBI Act the words are used : *every person who at the time the offence was committed was in-charge of, and was responsible to, the company for the conduct of the business of the company.* As the offence was committed in the year 1997, A3 was in-charge of and responsible to, the company accused for the conduct of its business at the time of commission of offence. Merely fact that SEBI had provided another opportunity to the company accused to get registration certificate after notification of the CIS Regulations does not exonerate A3 from his liability who was otherwise liable under Section 27 of the Act. During the trial, A 3 failed to produce any evidence to show that company accused had mobilized the funds in violation of Section 12 (1B) of the Act without his knowledge or that he had exercise all due diligence to prevent the company accused from mobilising funds in violation of Section 12 (1B) of the Act.

33. Considering the above discussion, I am of the opinion that A 3 was in-charge of, and responsible to, the company accused for the conduct of its business being one of the directors of the company accused, thus, he is also liable for the violation committed by company accused by mobilizing funds in violation



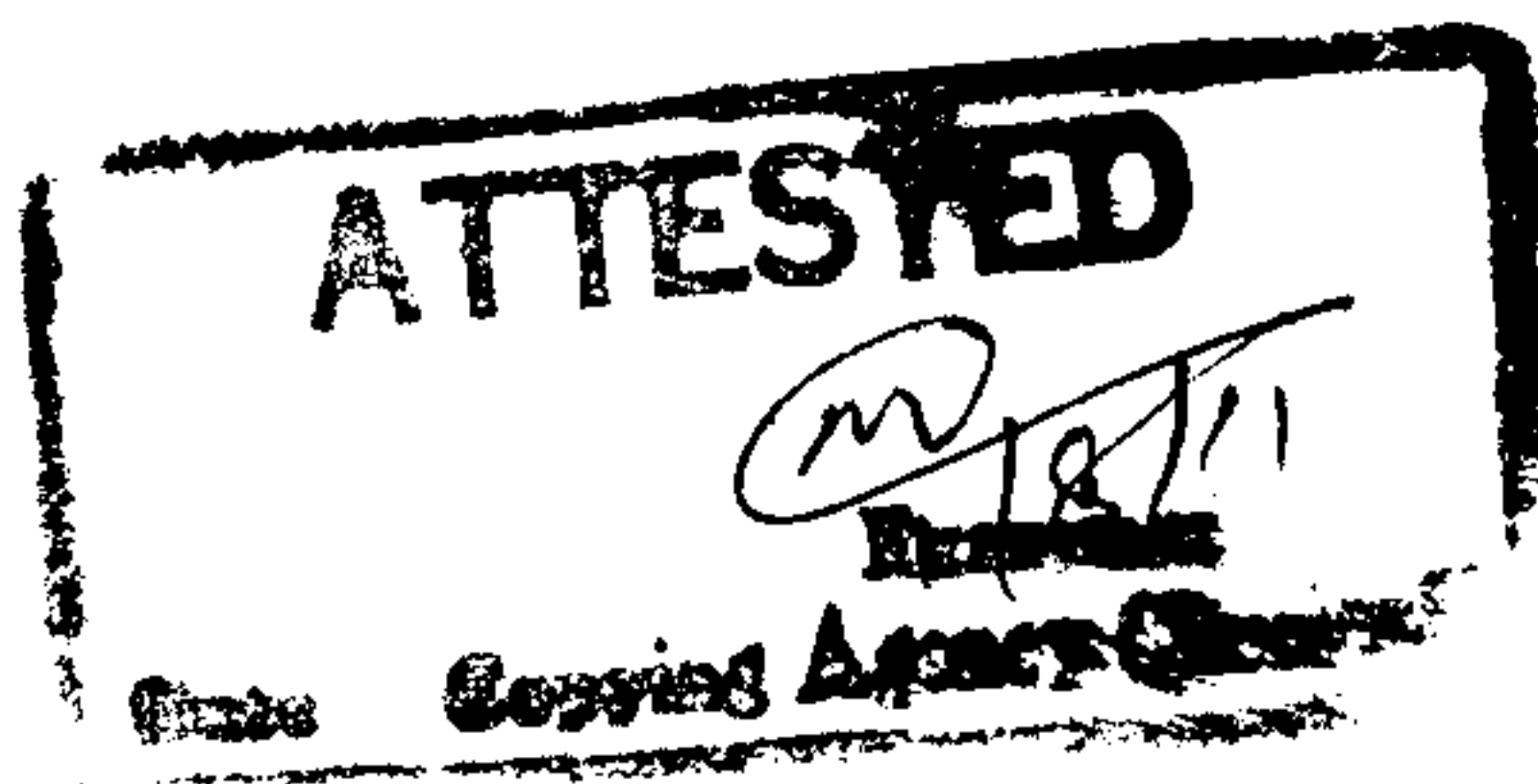


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of provisions of SEBI Act.

34. Learned Defence Counsel argued that CW1 Rakesh Bahanot was not duly authorised representative of complainant SEBI accused, thus, his testimony cannot be read in evidence. The said contention is refuted by the Counsel for the complainant on the grounds inter-alia that the powers were delegated in favour of certain officers of a particular rank by the Chairman of SEBI in terms of Section 9 read with Section 19 of the SEBI Act.

35. As per Section 19 of SEBI Act, the Board has the power to delegate its power and function in favour of any member, officer of the Board in writing and as per Section 9 of the Act, the Board has also power to appoint such other officers and employees as it considers necessary for the efficient discharge of its functions under the Act. In other words, the Board has power to appoint officers/employees for the efficient discharge of its function and has also power to delegate its power in writing in favour of such officers/employees for the efficient discharge of its function. In terms of Section 9 read with 19 of the SEBI Act, Chairman of SEBI had delegated some of his powers in favour of legal officers/prosecution division/Manager on 21.4.2003 which is Ex. CW1/1. Admittedly CW1 is a Manager, thus by virtue of CW1/1, he is competent to proceed with the matter and to depose on behalf





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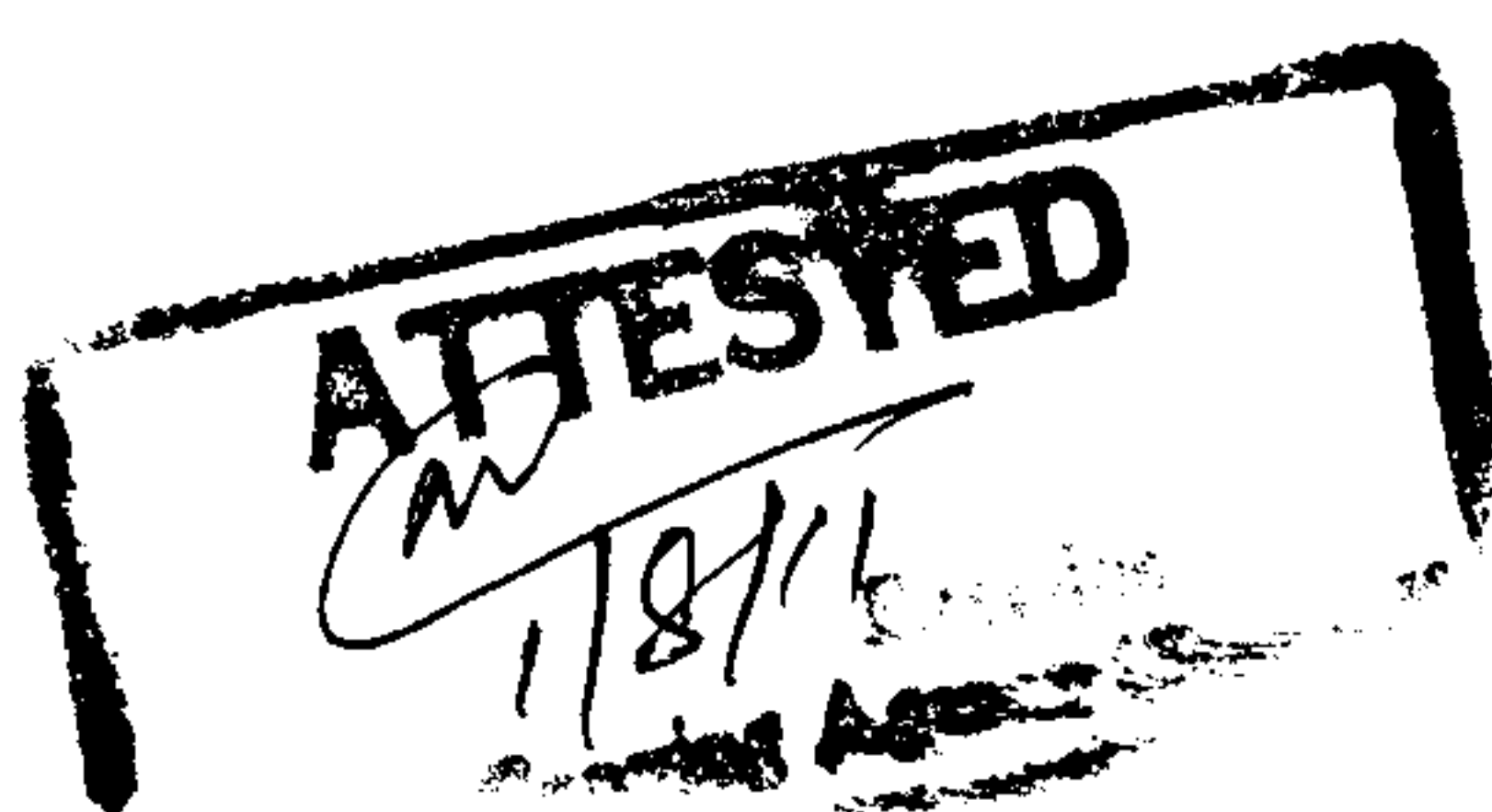
of the SEBI. Thus, to my mind, the said contention is without any substance.

36. At last learned defence counsel argued that the present complaint is not maintainable as it is beyond the period of limitation. It is contended that the maximum punishment for the offence punishable under Section 24(1) of the SEBI Act is only one year, thus as per Section 468 of Cr.P.C, the limitation period to file the complaint is only one year. The said contention is opposed by the Counsel for the complainant on the ground that since the violation of provisions of SEBI Act are continue in nature, Section 468 Cr.P.C is not applicable in the present matter.

37. Section 472 of the Code of Criminal Procedure runs as under:

Continuing offence- In the case of a continuing offence, a fresh period of limitation shall begin to run at every moment of the time during which the offence continues.

38. According to the Section 472 of the Code of Criminal Procedure, if offence is continuing in nature, fresh period of limitation shall begin to run at every moment of the time during which the offence continues. In the instant case, company accused violated Section 12 (1B) of the SEBI Act as it launched the CIS

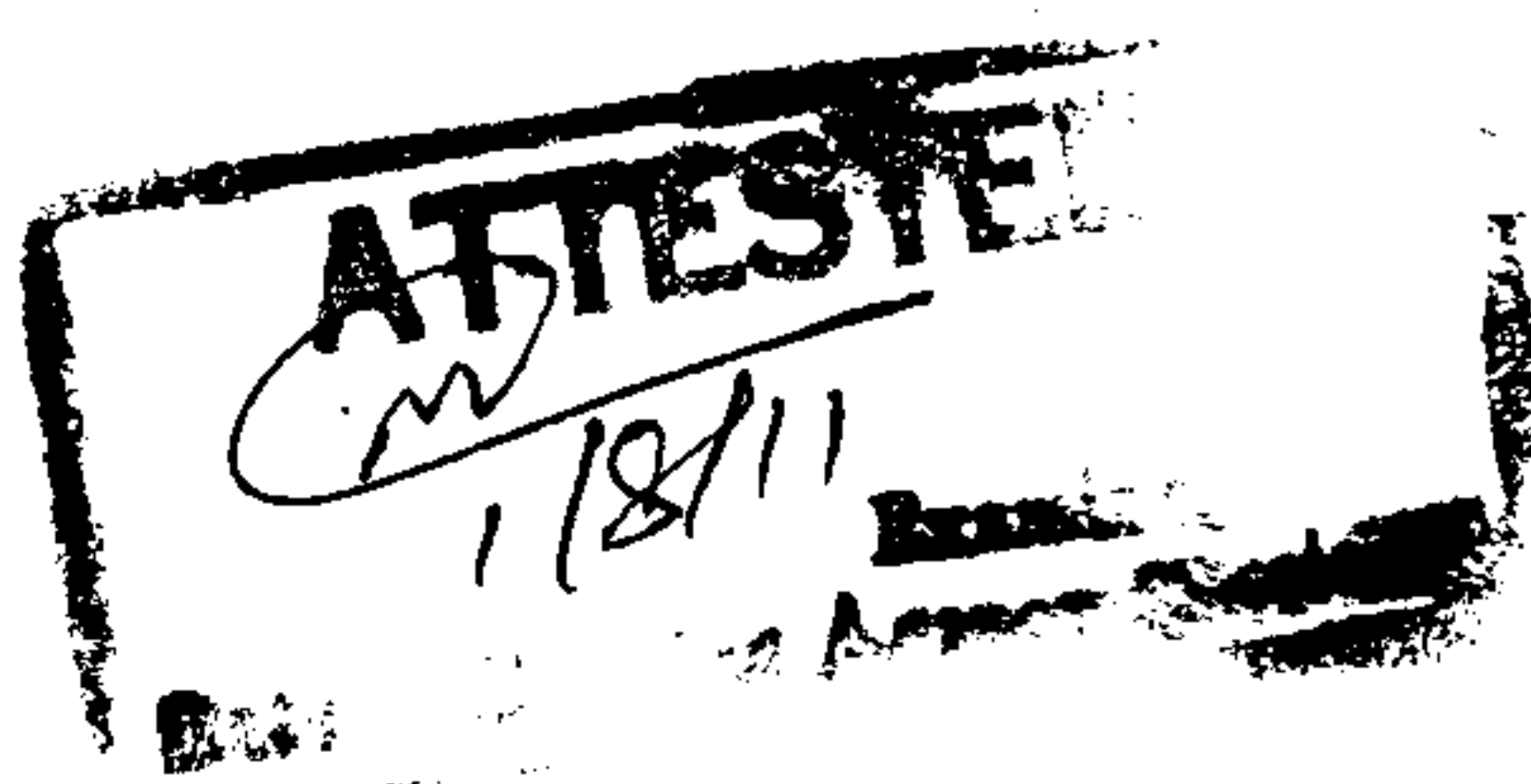




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without obtaining the registration from the SEBI and when CIS regulations were notified in October 1999, company accused failed to apply for registration in terms of regulation 5 and if company failed to apply for registration or the registration is declined, as per regulation 73, company accused was liable to refund the amount to the investors and to submit the winding up and repayment report with the SEBI. But company failed to comply with the CIS regulations. Since company failed to comply with the regulations till the filing of present complaint, the violations are continuing in nature, hence the limitation period provided under Section 468 Cr.P.C is not applicable in the present matter and complainant is entitled for the benefit of provision of Section 472 of the Code of Criminal Procedure. Same view was taken by the High Court of Delhi in case *Vishnu Prakash Bajpai Vs. SEBI*, in CR. MC. 1182/2009 decided on 10.02.2010.

39. 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 also succeeded to prove that A3 being one of the directors of company accused (A1) was in-charge of, and responsible to, the company accused for the

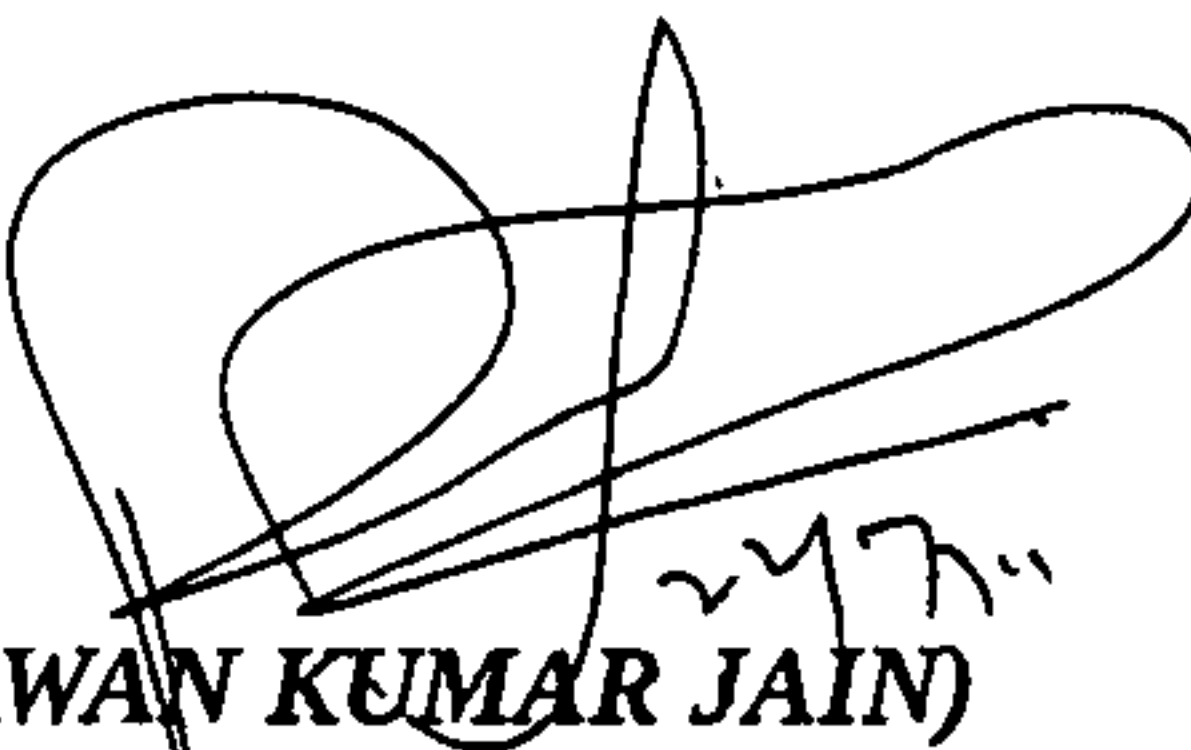




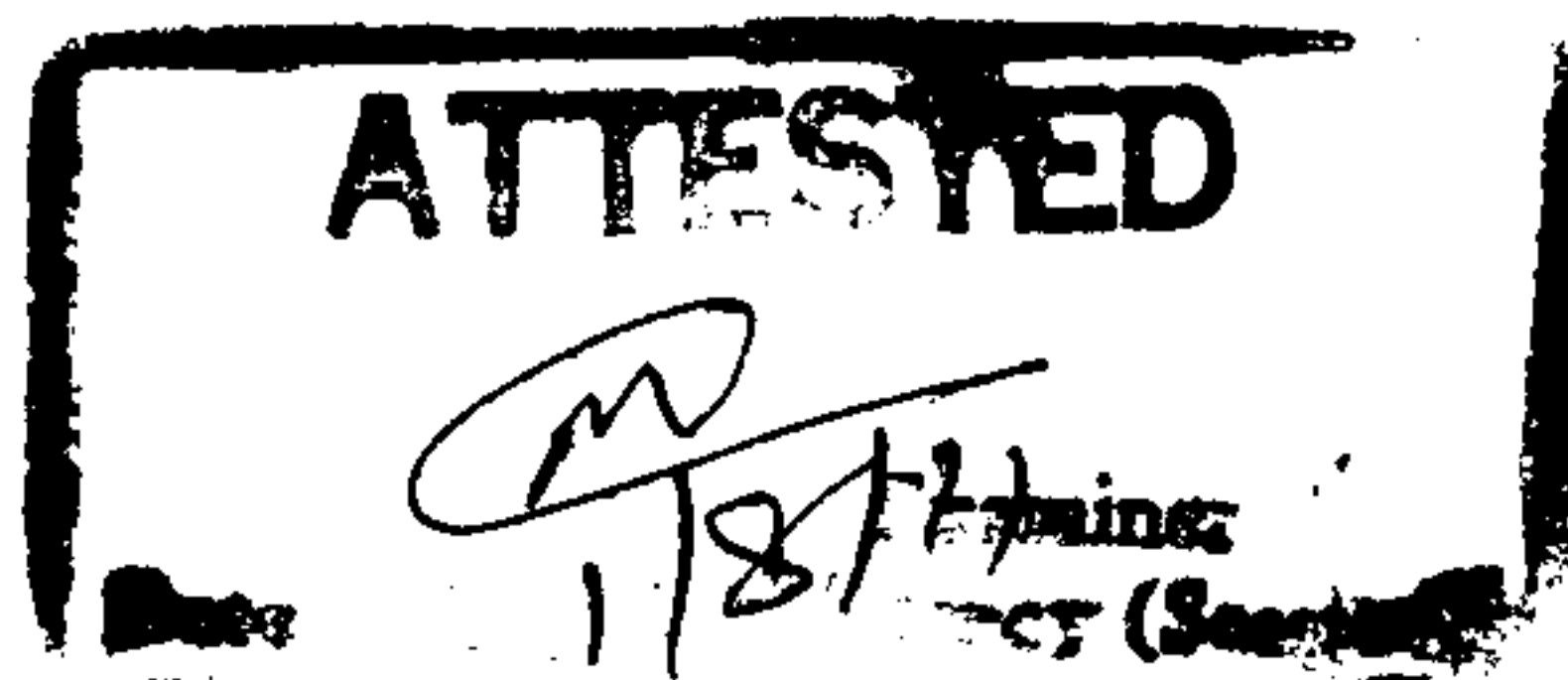
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conduct of its business at the time of above violations, thus in terms of Section 27 of the Act, A3 Mudrika Singh Yadav is also liable for the above violations. Accordingly, I hereby hold them i.e. A1 Pepkar Forests India Ltd. Company & A3 Mundrika Singh Yadav guilty for the offence punishable under Section 24 (1) read with section 27 of the SEBI Act.

*Announced in the open Court
on this 22nd day of July, 2011.*


(PAWAN KUMAR JAIN)

ADDITIONAL SESSIONS JUDGE-01
CENTRAL/THC/DELHI



SEBI Vs. M/S Pepkar Forests India Ltd. Company

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

Complaint Case No. 66/10
ID No: 02401R0272932003

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 its Manager Sh. Rakesh Bhanot, AGM, SEBI.

.....Complainant

Versus

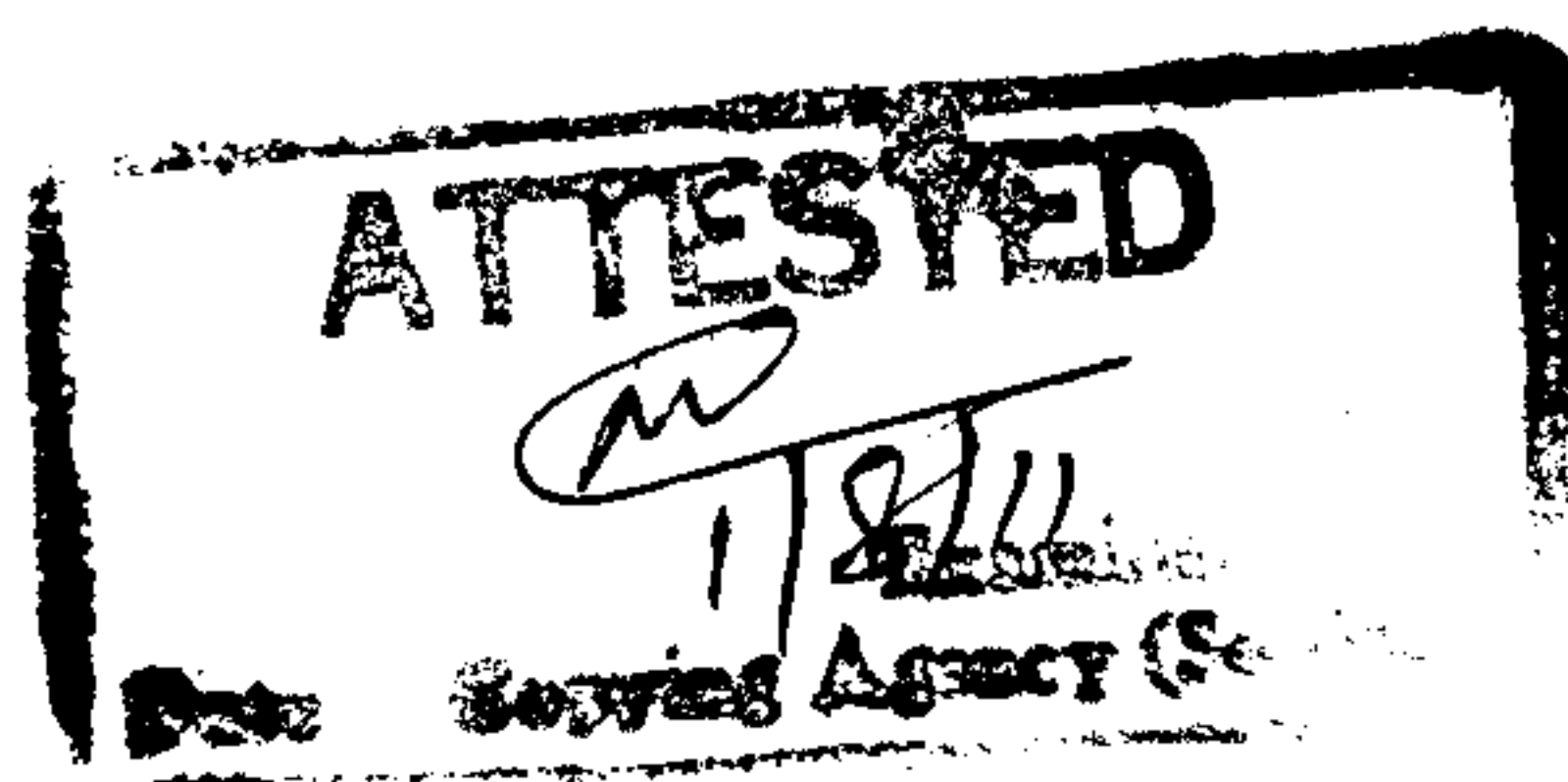
1. M/S Pepkar Forests India Ltd. Company incorporated under the Companies Act, 1956, having its Regd. Office at Hari Niwas, Subhash Nagar, Clementown, Dehradun-248 001 (Uttaranchal) and Head Office at 204, Satija House Commercial Complex, Dr. Mukharji Nagar, Behind Batra Cinema, Delhi-110 009 & also at B/225, Bhajanpura, Main Market, Delhi-110 053.

.....Convict no.1

2. Sh. Mudrika Singh Yadav, Director of Accused No.1, R/o Village Nawapura Post Tamalpura, PS Mohmadabad, Distt.

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SEBI Vs. M/S Pepkar Forests India Ltd. Company

Ghaziapur (U.P.).

.....Convict no.2

Present: Sh. Sanjay Mann, Advocate for the SEBI
None for convict no.1 company.
Sh. Anish Bhola, Advocate, Counsel for convict
no. 3.

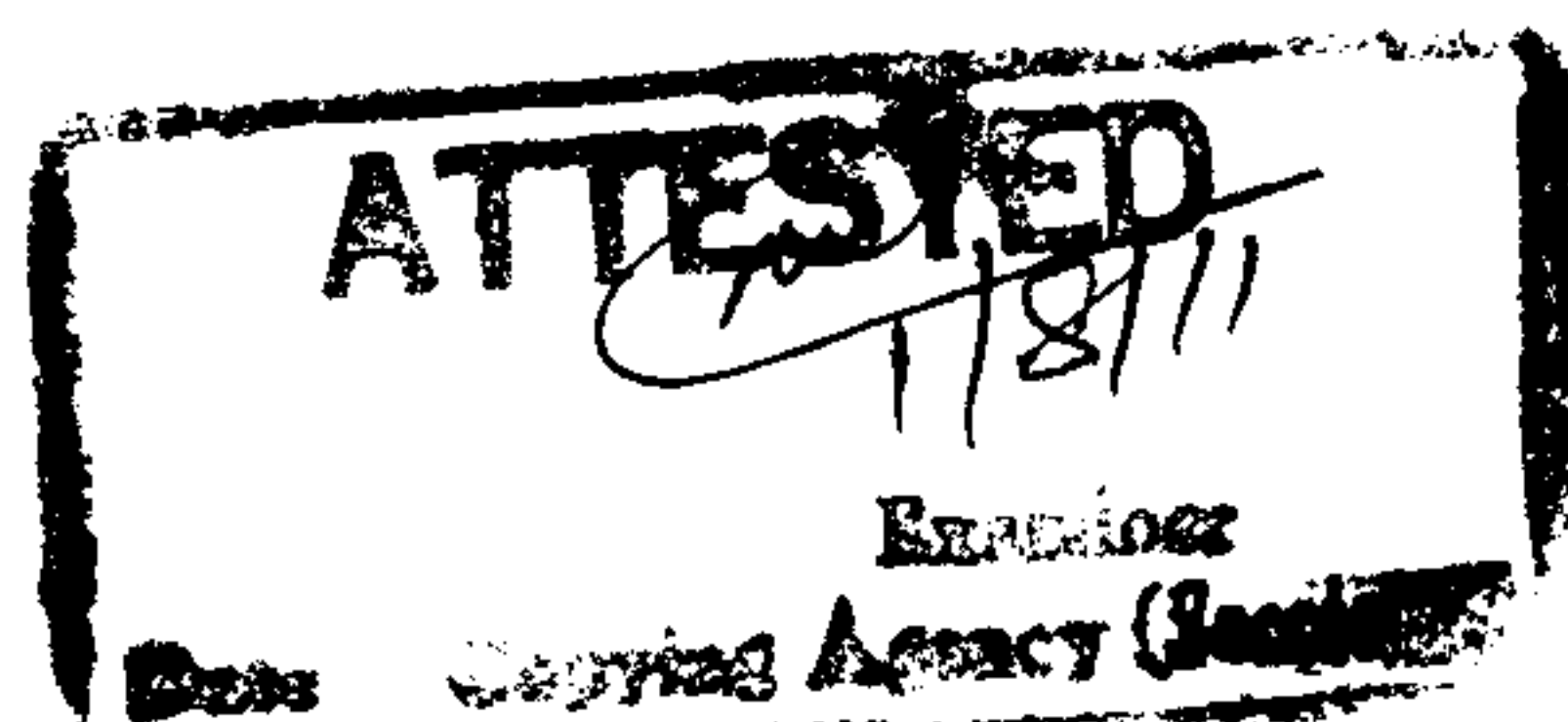
ORDER ON THE POINT OF SENTENCE:

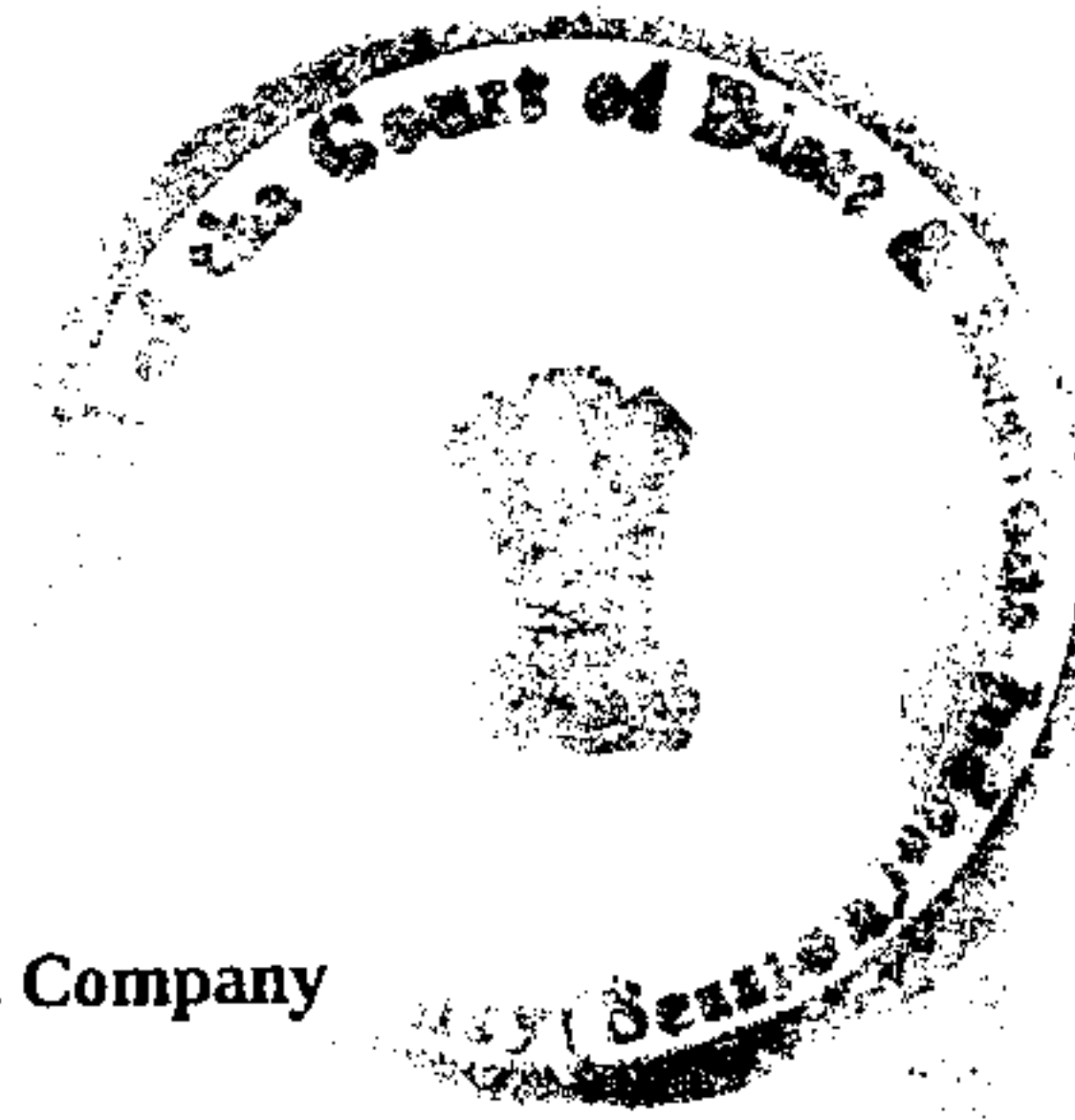
1. Vide separate judgment dated 22.07.2011, A1 i.e. Company accused and A3 Mudrika Singh Yadav have been held guilty for the offence punishable under Section 24 (1) read with Section 27 of the SEBI Act.
2. Learned counsel appearing for convict No.3 requested for a lenient view on the ground that convict No.3 is a very poor person and is sole bread earner of the family having three school going children and he has no criminal antecedent. On the other hand, counsel for complainant requested for the maximum sentence on the ground inter alia that company accused (convict no.1) had mobilized funds to the tune ₹ 19,11,220/- and convict failed to produce any evidence to show that the amount had been refunded to the investors.
3. I have heard Counsels for both parties, perused the record carefully and gave my thoughtful consideration to their



CC No.66/10

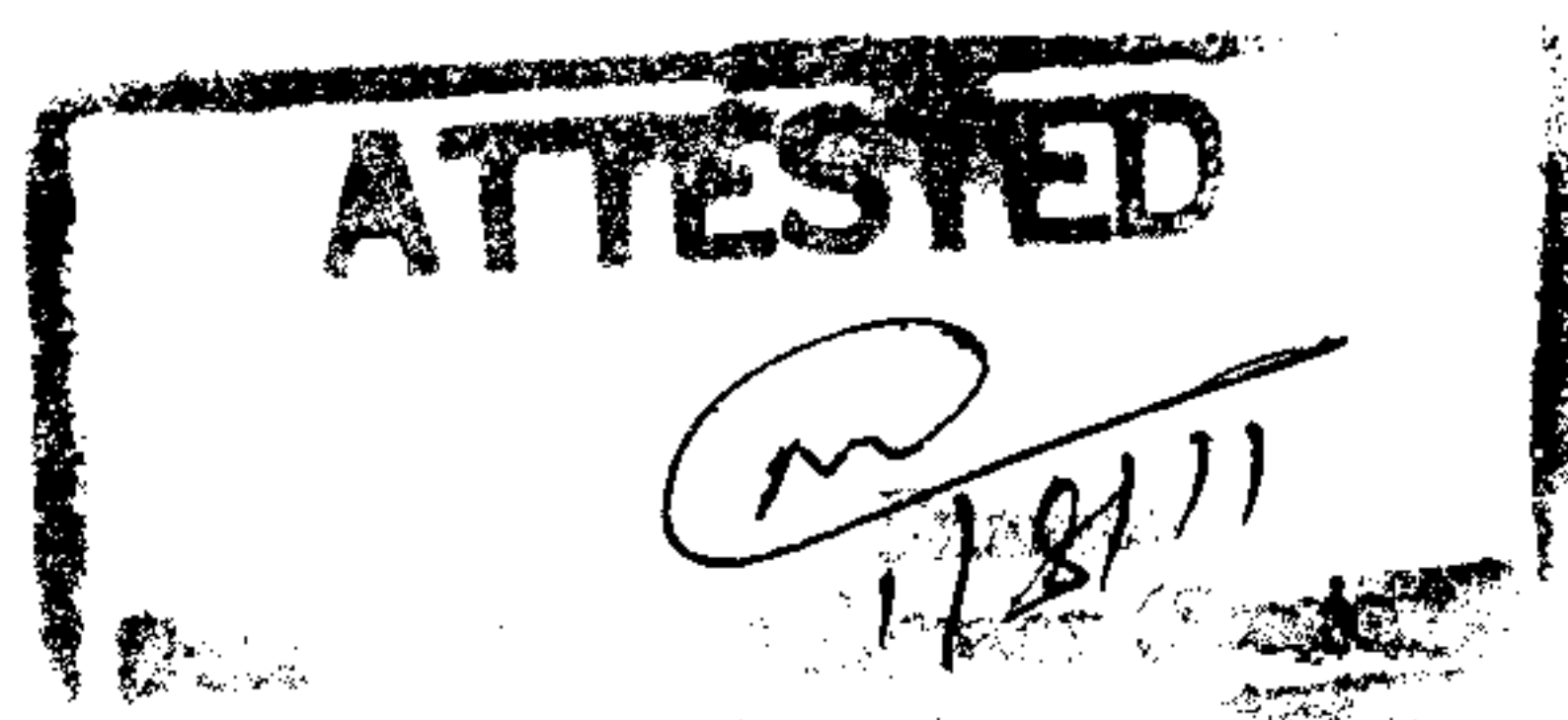
2 of 4





submissions.

4. No doubts in this matter the company accused had mobilized funds to the tune of ₹ 19,11,220/- and during the trial convict no.2 failed to produce any evidence to show that the said amount had been refunded to the investors. Simultaneous, there is nothing on record which may show that any complaint of any investor is pending with the SEBI.
5. Considering the social & economic condition of the convict no.2, I am of the view that end of justice will be met, if convict No.2 is burdened with the substantial amount of fine. Accordingly, I hereby impose a fine of ₹ 2,00,000/- upon convict No.1 i.e. M/S Pepkar Forests India Ltd. and ₹ 50,000/- upon Convict No. 2 Mudrika Singh Yadav in default convict No. 2 shall undergo three months Simple Imprisonment for the offence punishable under Section 24 (1) of the SEBI Act.
6. Fine amount is paid by convict No.2.
7. Bail Bond and Surety bond of convict No.2 stand cancelled. His surety stands discharged. Original documents, if any, be returned to the surety.

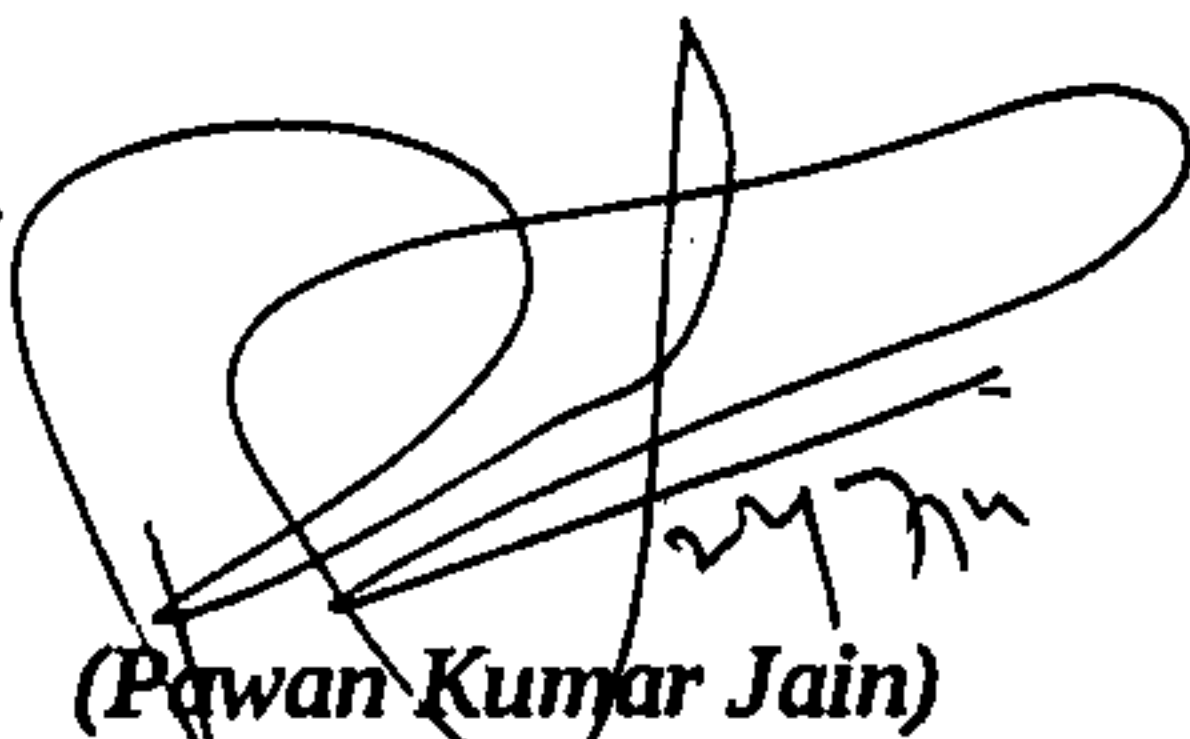




SEBI Vs. M/S Pepkar Forests India Ltd. Company

8. Copy of judgment along with order on the point of sentence be given to the convict No.2/his counsel free of cost.
9. File be consigned to record room.

Announced in the open Court.
On this 22nd day of July 2011


(Pawan Kumar Jain)
Additional Sessions Judge-01
Central/THC, Delhi

