

IN THE COURT OF ADDITIONAL CHIEF METROPOLITAN

MAGISTRATE, DELHI

CC NO: 26 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

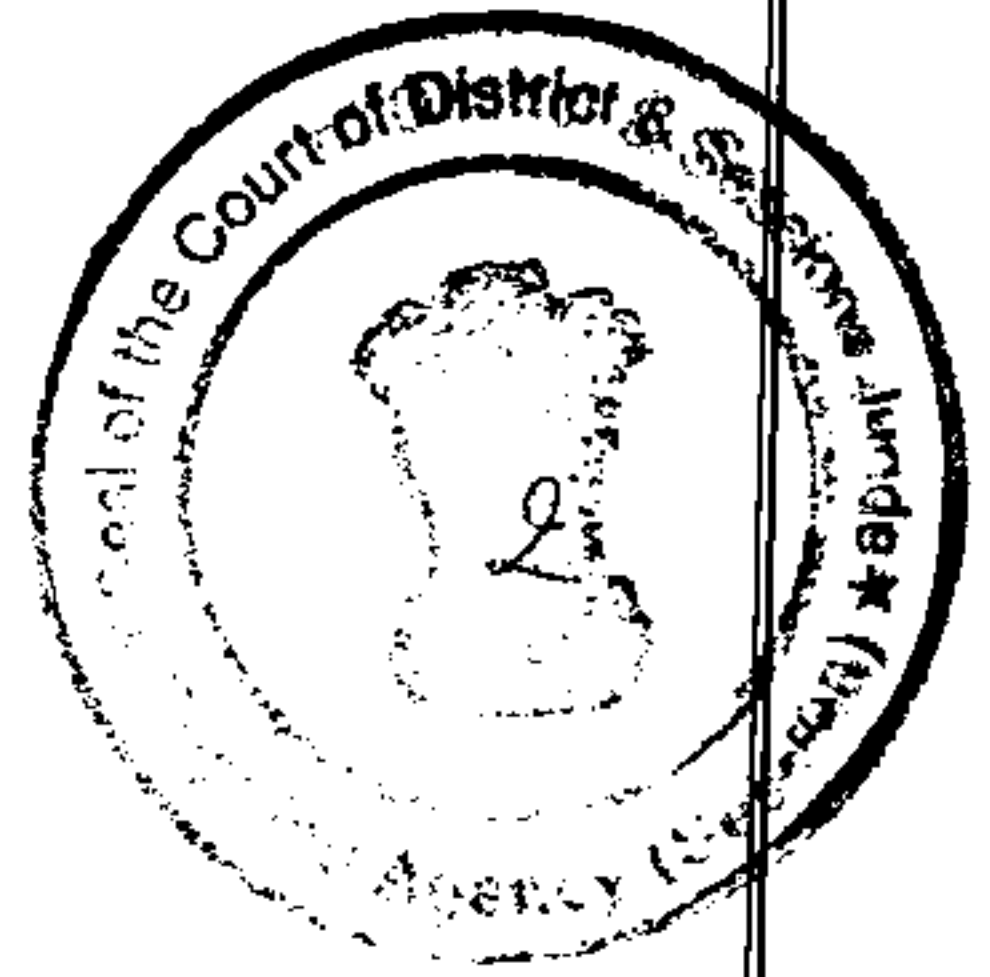
VERSUS .

1. SEPL Motel & Resorts Ltd. a Company incorporated Under the Companies Act, 1956, having its Regd. Office at : 11-A/33, WEA, Karol Bagh, New Delhi- 110005 and Having Zonal Office at : 304, Adharshila Complex, South Gandhi Maidan, Patna- 800001,
2. Shri Ramadhar Sharma S/o Shri Suraj Deo Sharma, Director of Accused No.1, R/o: Bhagirathi, P.O. Mahendru, P.S. Sultanganj, Patna- 800 007.
3. Shri Rajiv Dutta, S/o Shri Late Saket Bihari Dutta, Director of Accused No.1, R/o: Patherighat, Patna-800 007.
4. Shri Ratneshwar Prasad, S/o Shri

ATTORNEY

14/2/12

Copy to Agency (Delhi)



Baidhyanath Prasad, Director of
Accused No.1, R/o: Block No. 15, Flat
No. 126, Rajendra Nagar, Patna-
800016.

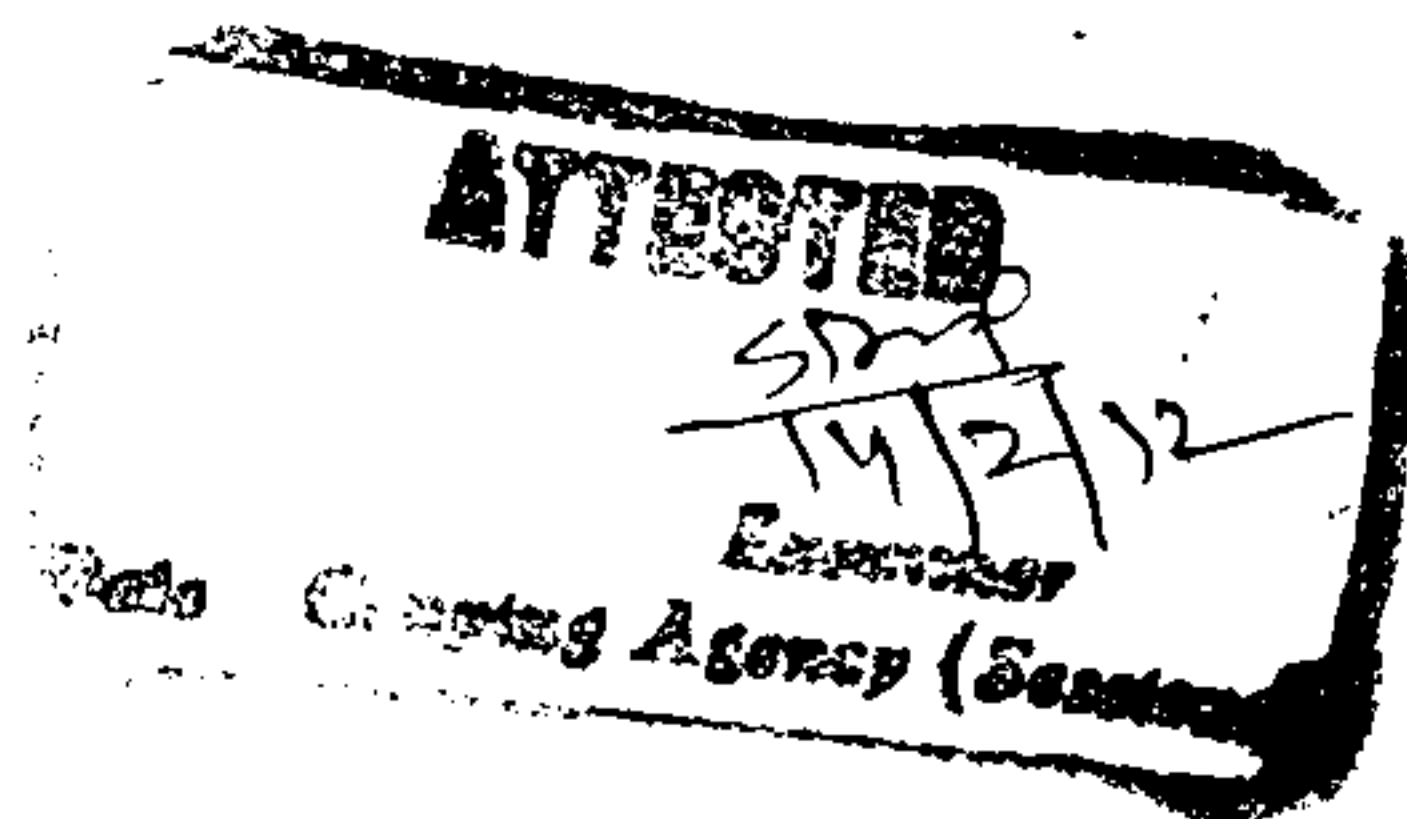
5. Shri Akhileshwar Kr. Sinha S/o Late
Shri Sukhdeo Narain, Director of
Accused No.1, R/o Sheopur,
Mahendru, Patna- 800006.

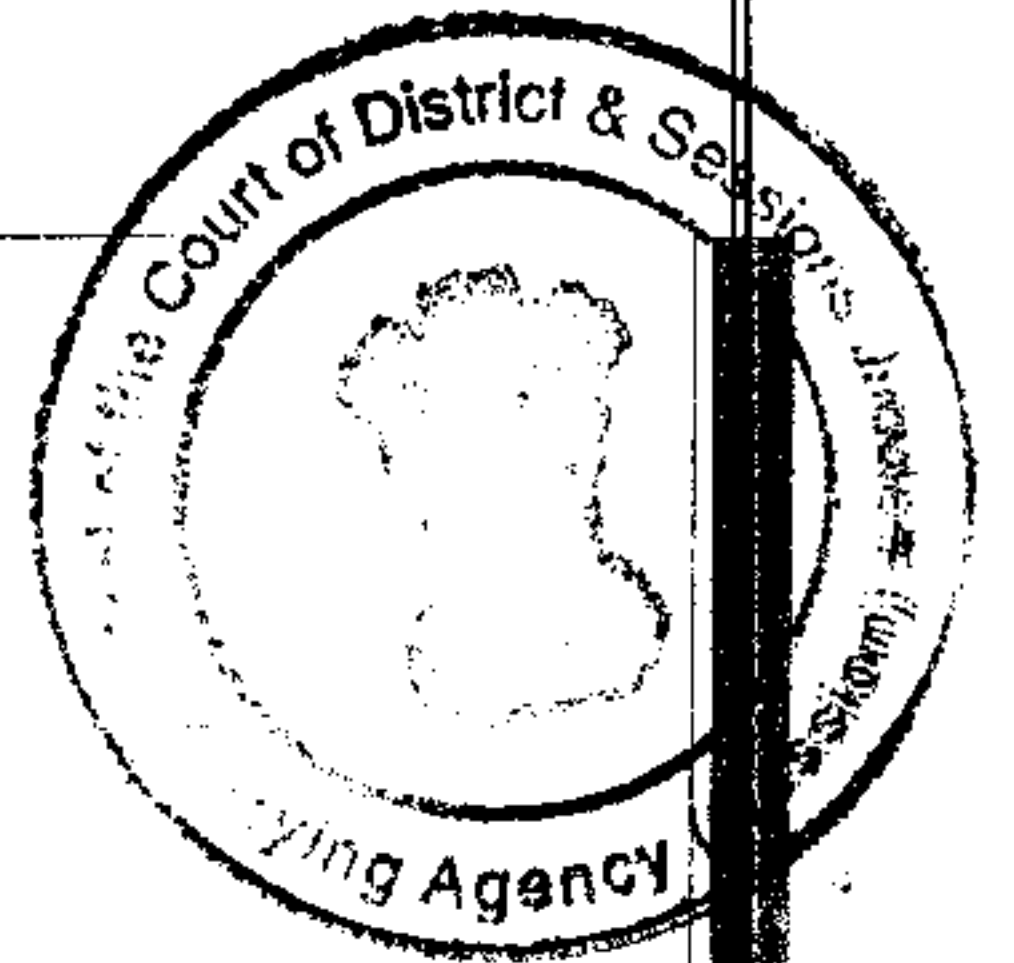
6. Shri Sanjay Kr. Mishra S/o Shri Brinda
Kr. Mishra, Director of Accused No.1,
R/o: 15/479 A, Karol Bagh, New Delhi.

*Present Add:
R/o. D-155, Ground Floor-2
New Rajendra Nagar
New Delhi
.....Accused*

**COMPLAINT UNDER SECTION 190 AND 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. 4

CR No. 29/10

8.02.2012

Present: Sh. Sanjay Mann, Advocate Counsel for SEBI.
Accused No. 2 in person with Sh. Manoranjan Sharma, Advocate.
Accused No. 3 & 4 with Sh. Amit Kumar, Advocate.
Accused No. 5 is PO vide order dated 19.01.2012.
Proceedings against accused No. 6 are abated vide order dated 11.07.08.
Accused No. 1 is a company represented by accused No. 2.

The matter is listed for statement of accused U/s 313 Cr. P.C. Their statement is recorded in which they refused to lead any evidence in defence.

At the request of counsels for the parties, arguments heard.

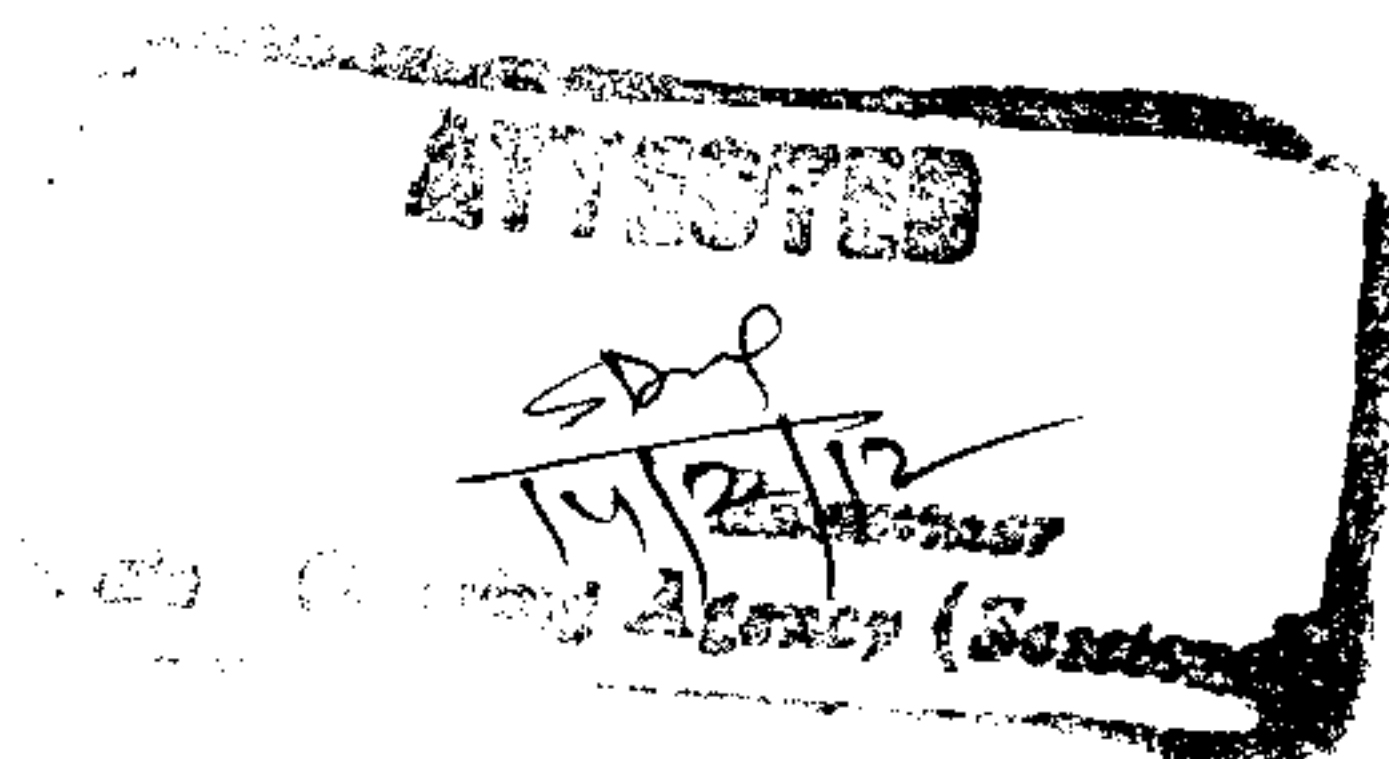
Vide separate judgment, A-1 to A-4 are held guilty for the offence punishable U/s 24(1) r/w 27 of the SEBI Act.

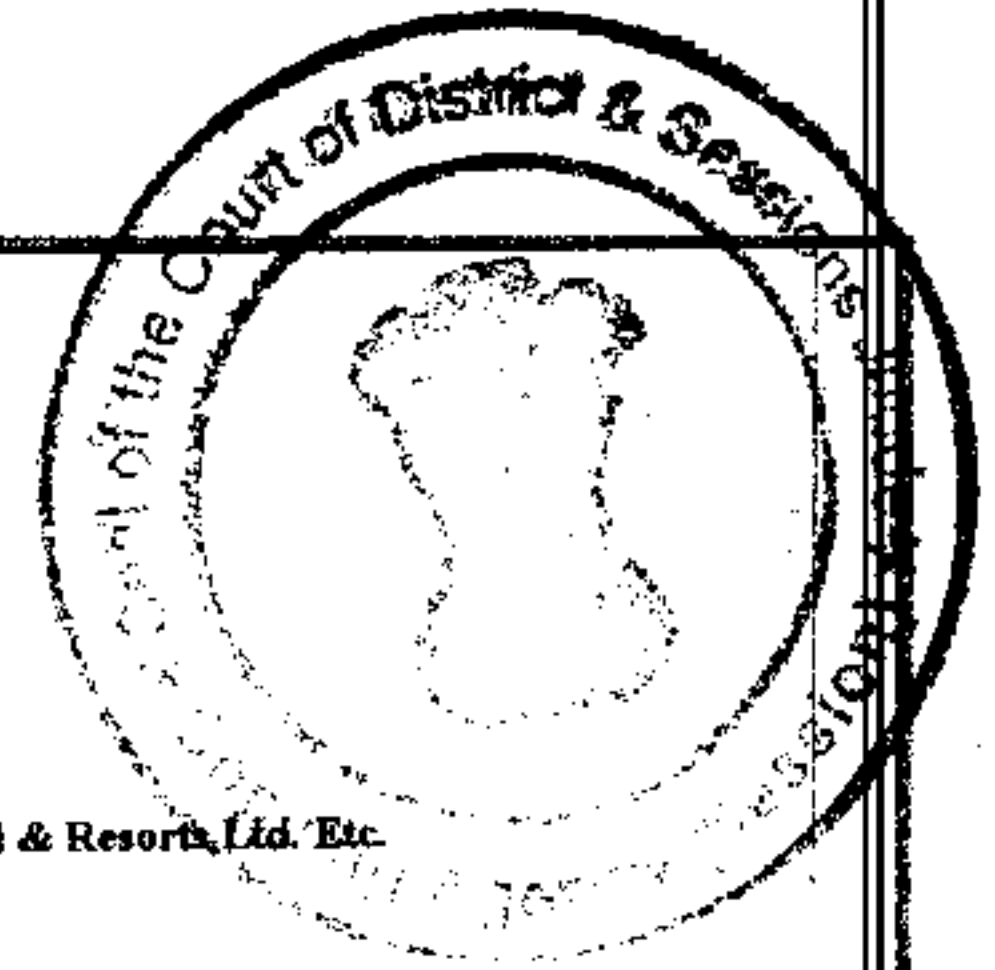
Vide separate order, convicts are burdened with a fine of ₹20,000/- each in default. Convict No. 2 to 4 shall undergo 3 months simple imprisonment. Fine imposed is paid.

Copy of judgment along with order on point of sentence be given to all the convicts/ their counsels.

File be consigned to record room with direction that the same is revived as and when the accused No. 5 is arrested.

[PAWAN KUMAR JAIN]
ASJ-01/CENTRAL/DELHI
8.02.2012.





SEBI Vs. SEPL Motel & Resorts Ltd. Etc.

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

**Complaint Case No. 29 of 2010
ID No: 02401R5171492004**

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. Rekha Verma, Manager, SEBI.

Versus

1. **SEPL MOTEL & RESORTS LTD.**
a company incorporated Under the Companies Act, 1956, having its Registered officer at:
11-A/33, WEA, Karol Bagh, New Delhi-110005
and having Zonal office at:
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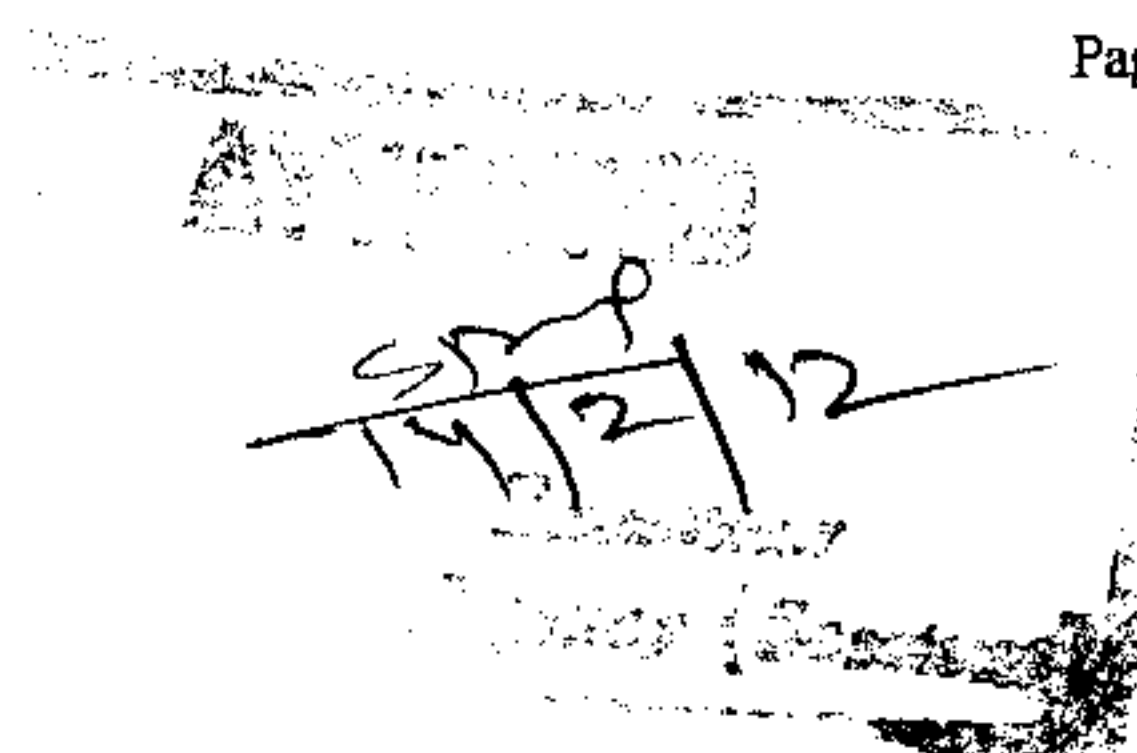
.....Accused no.1

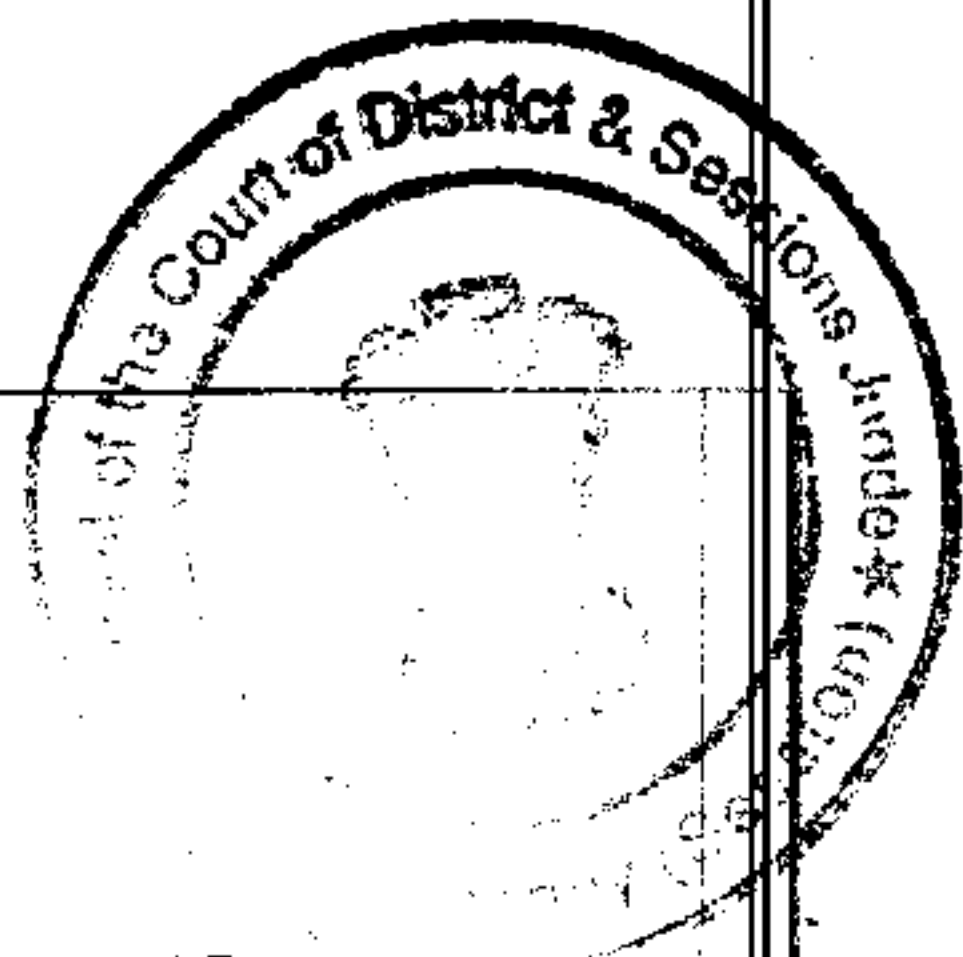
2. **Sh. Ramadhar Sharma (Director)**
S/o Sh. Suraj Deo Sharma,
R/o Bhagirathi, P.O.Mahendru,
PS Sultanganj, Patna-800 007

.....Accused no.2

3. **Sh. Rajiv Dutta (Director)**
S/o Late Sh. Saket Bihari Dutta
R/o Patherighat, Patna

.....Accused no.3





SEBI Vs. SEPL Motel & Resorts Ltd. Etc.

4. **Sh. Ratneshwar Prasad (Director),**
S/o Sh. Baidhyanath Prasad,
R/o Block No. 15, Flat no. 126,
Rajendra Nagar, Patna-800016.

.....Accused no.4

5. **Sh. Akhileshwar Kr. Sinha(Director)**
S/o Late Sh. Sukhdeo Narain,
R/o Sheopur, Mahendru,
Patna-800006

.....Accused no.5

6. **Ms. Sanjay Kumar Mishra (Director)**
S/o Sh. Brinda Kumar Mishra,
R/o D-155, Ground Floor,
New Rajender Nagar, New Delhi

.....Accused no.6

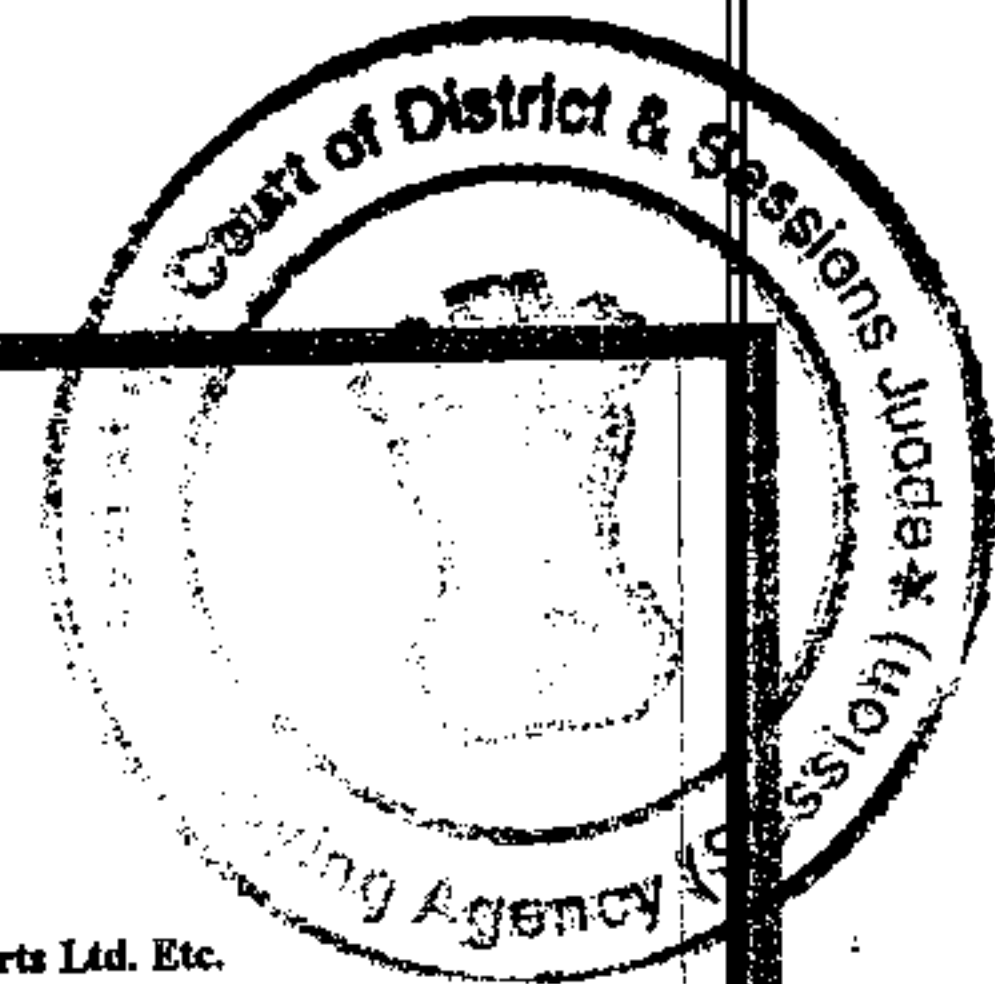
Date of Institution : 14.01.2004
Date of committal to Session Court : 16.04.2005
Date of pronouncement of judgment : 08.02.2012

Present: Sh. Sanjay Mann, Advocae, Counsel for SEBI.
Sh. Manoranjan Sharma, Advocate, Counsel for
accused no.1 & 2
Sh. Amit Kumar, Advocate, Counsel for accused no. 3 & 4

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 January 14, 2004 in the Court of Additional Chief

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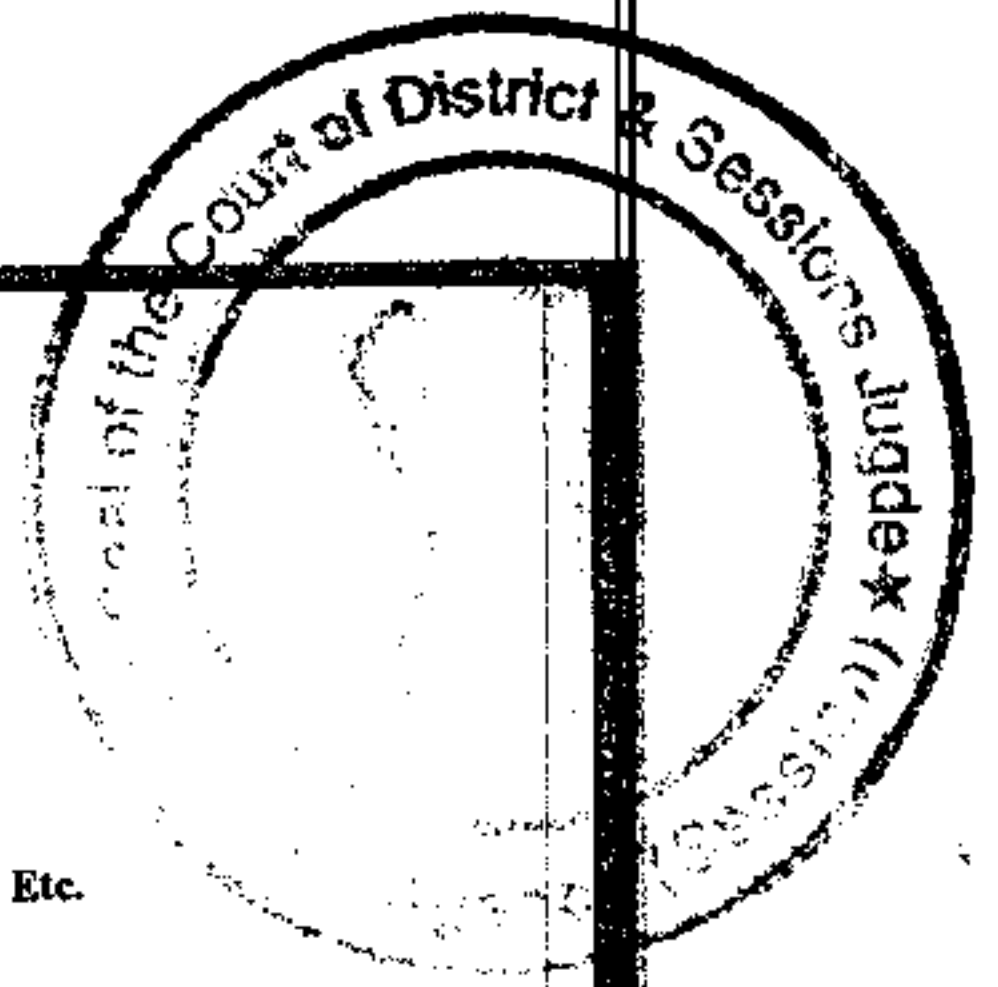
SEBI Vs. SEPL Motel & Resorts Ltd. Etc.

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. Six persons were arrayed as accused in the criminal complaint preferred under Section 200 Cr.P.C., they being SEPL Motel & Resorts Ltd. (hereinafter, "A1" or "the Company Accused"), accused No. 2 Sh. Ramadhar Sharma ("A2"), accused No.3 Sh. Rajiv Dutta("A3") accused No.4 Sh. Ratneshwar Prasad ("A4") accused No.5 Sh. Akhileshwar ("A5") and accused No.6 Sanjay Kumar Mishra. It is alleged that A2 to A6 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 ₹ 2.10 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 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

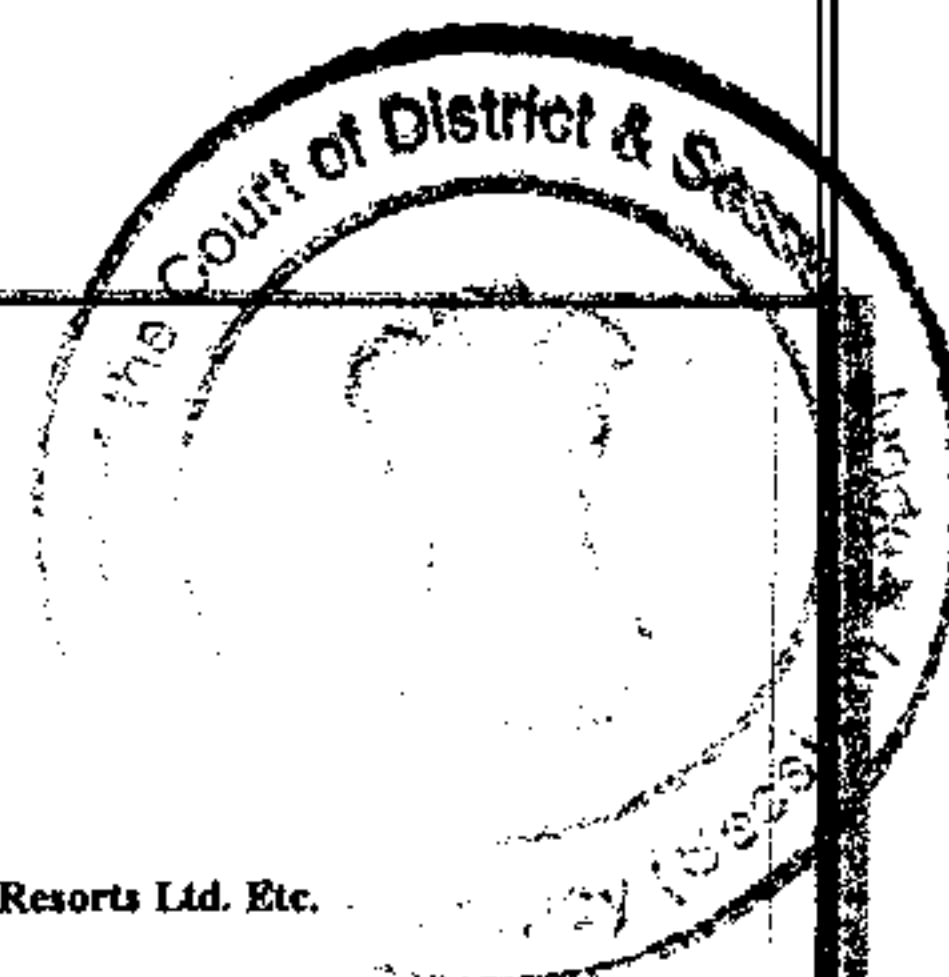
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of the CIS Regulations, thus constituting violation of the law and regulations framed thereunder and thereby committing the offence alleged as above.

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 Directions of Hon'ble High Court, under orders of the Ld. District & Sessions Judge, this case was transferred on April 16, 2005 from the Court of Ld. ACMM to the Court of Sessions, then presided over by Ms. Asha Menon, the then Additional Sessions Judge, Delhi.
6. **Vide** order dated July 27, 2007, a notice for the offence punishable under Section 24 read with section 27 of the SEBI Act was served upon the A1(company), A2 to A6 wherein all accused persons pleaded not guilty and claimed trial. Since A1 company has not been represented by none, hence none had responded to the notice on behalf of company. Vide order dated July 11, 2008, proceedings qua A6 had been abated on account of his death. Vide order dated January 19, 2012, A5 was declared proclaimed offender on account of his non-appearance.
7. To prove its case, complainant has examined only two

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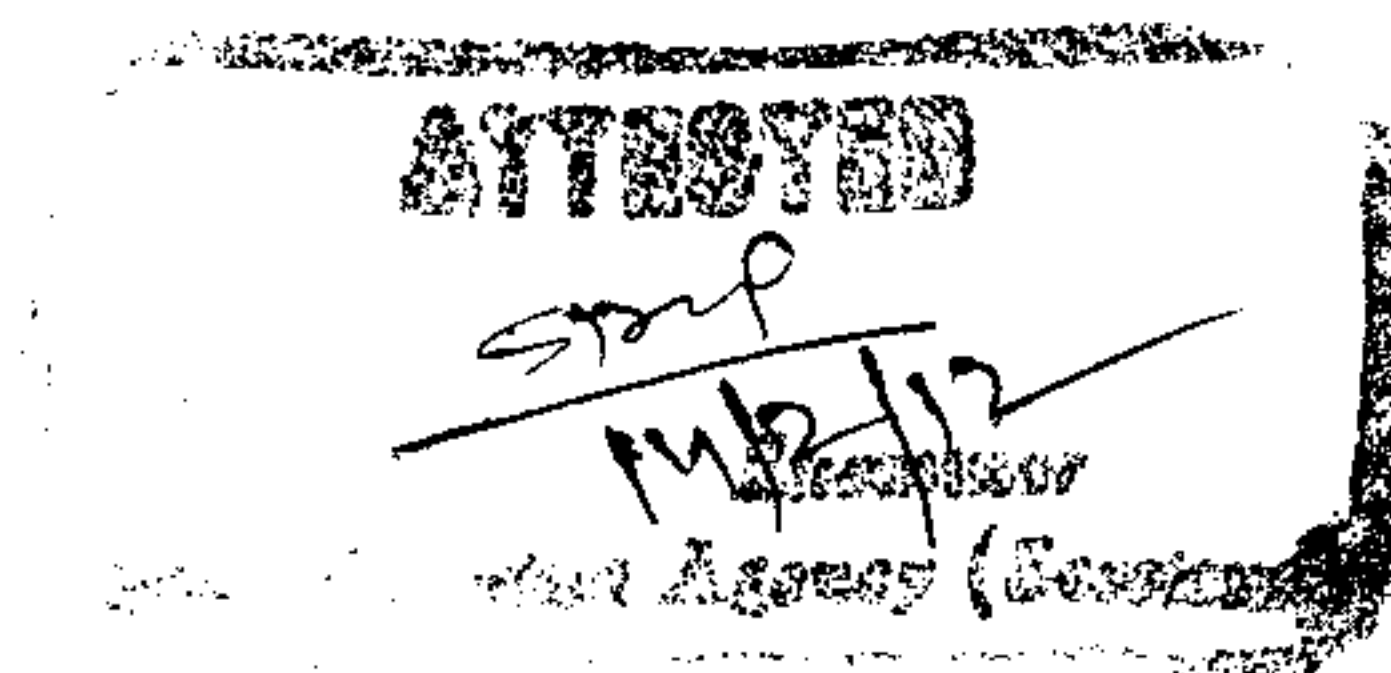
witnesses namely Ms. Versha Aggarwal, Manager, SEBI as CW1 and Sh. Arvind Kumar, Asstt. General Manager, SEBI as CW2. Thereafter, A2, A3 & A4 were examined under Section 313 Cr.P.C. wherein they took the plea that they had resigned from the directorship of company accused before filing the present criminal complaint. However, accused persons preferred not to lead any evidence in their defence.

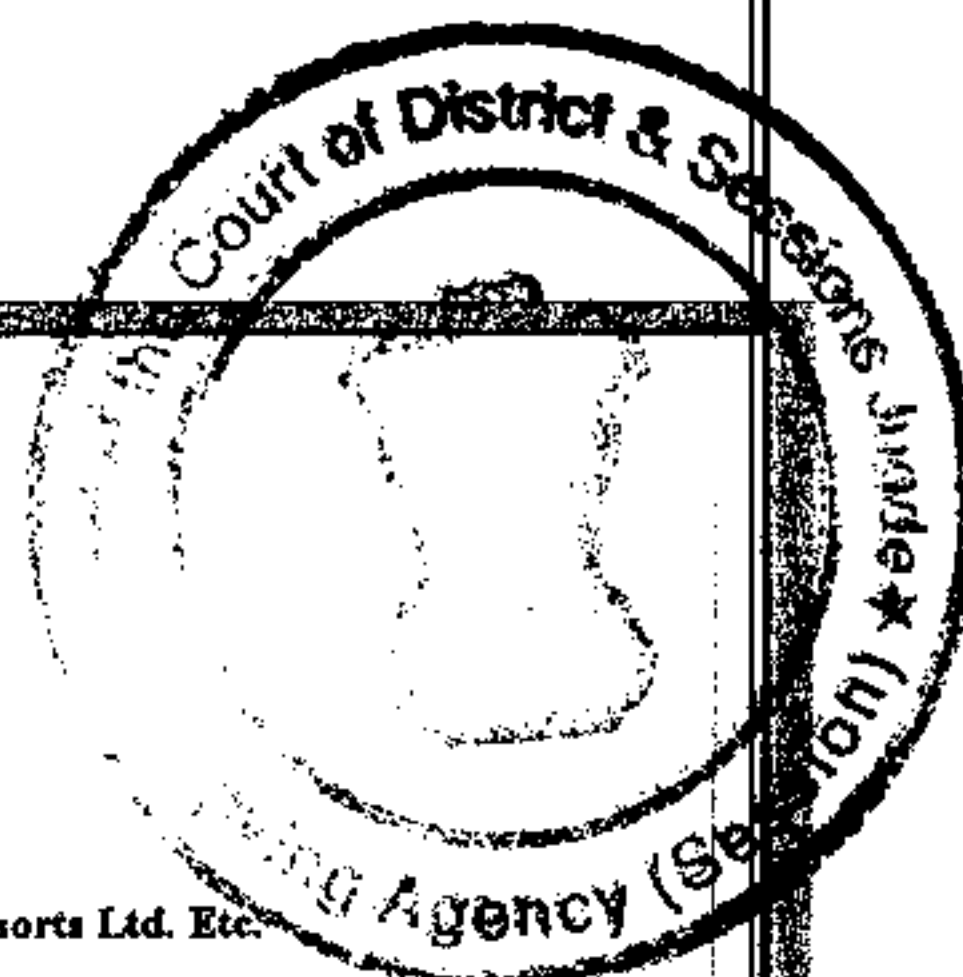
8. I have heard arguments advanced by Sh. Sanjay Mann, Advocate, counsel for complainant and Sh. Manoranjan Sharma, Advocate, Counsel for A1 & A2 and Sh. Amit Kumar, Advocate, counsel for A3 & A4 and perused the record carefully.

9. **Learned** counsel appearing for accused persons vehemently contended that accused persons are not liable for the violation committed by the company accused as they had resigned from the directorship of company accused before filing of the present criminal complaint. On the other hand, learned counsel appearing for SEBI sagaciously contended that accused persons were the directors of company accused at the time when company accused had mobilized funds in violation of Section 12(1B) of the SEBI Act. It was contended that mere fact that accused persons had resigned from the directorship of company accused is not sufficient to exonerate them from their liability.

10. It is undisputed fact that company accused was incorporated on September 22, 1997 and this fact is admitted by the company accused in its letter Ex. CW1/3. Moreover, this fact is also proved from the Memorandum and Articles of Association of company

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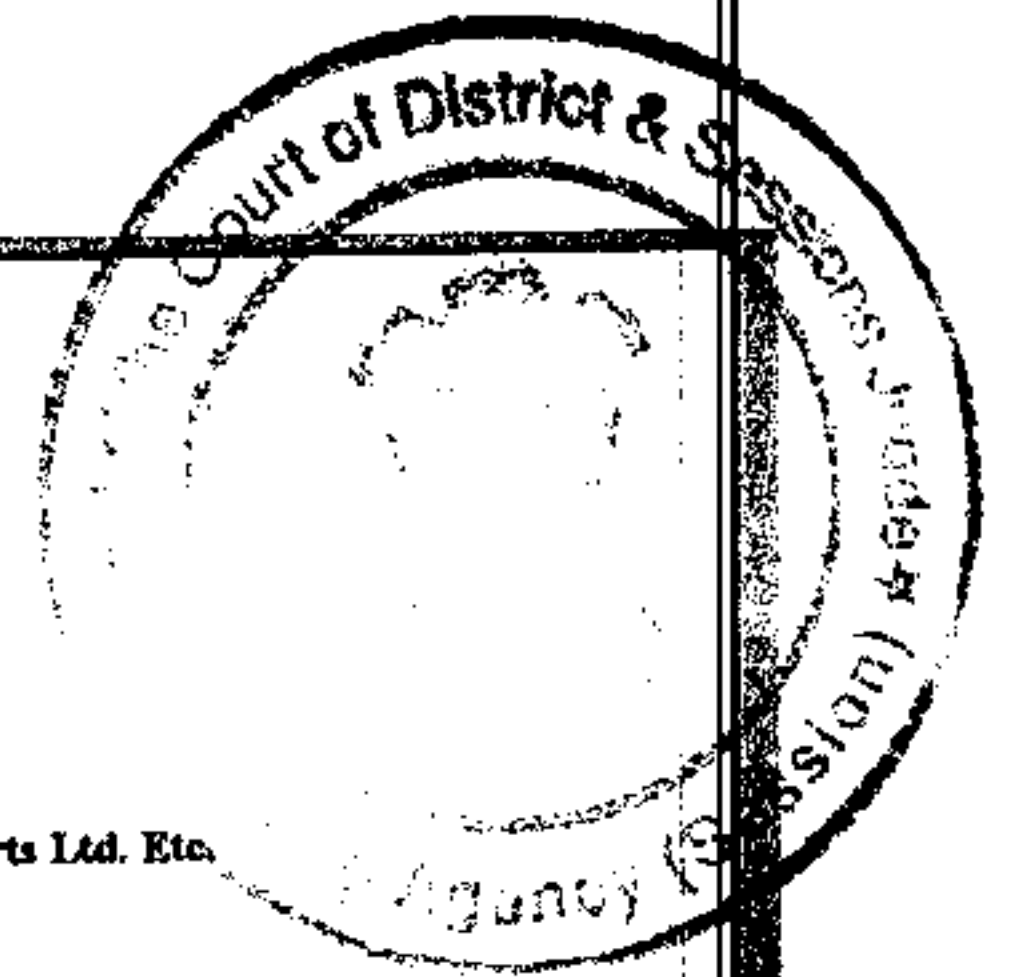
accused.

11. Section 12(1B) was inserted in the Act w.e.f January 25, 1995.

As per 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 obtained a certificate of registration from the Board in accordance with the regulations. Since the company accused was incorporated only in September 1997, thus as per Section 12(1B) of the Act, company accused was not supposed to mobilize any fund unless it obtained a certificate of registration from the SEBI. Admittedly, company accused had not obtained any such certificate from the SEBI, thus company accused had violated the provisions of Section 12(1B) in the year 1997 itself by mobilizing funds without obtaining certificate of registration from the SEBI.

12. Though relaxation has been provided under proviso to Section 12(1B) of SEBI Act, but this relaxation is available only to those companies which were operating any scheme at the time of insertion of Section 12(1B) of the Act. In other words, if any collective investment scheme was in existence on or before January 25, 1995, such companies were entitled to continue with such schemes till the time regulations were notified by the SEBI. In the instant case, company accused was incorporated only on September 22, 1997, thus, company accused was not entitled for the relaxation as provided under proviso to Section 12(1B) of the Act.

13. It is undisputed fact that CIS Regulations were notified w.e.f

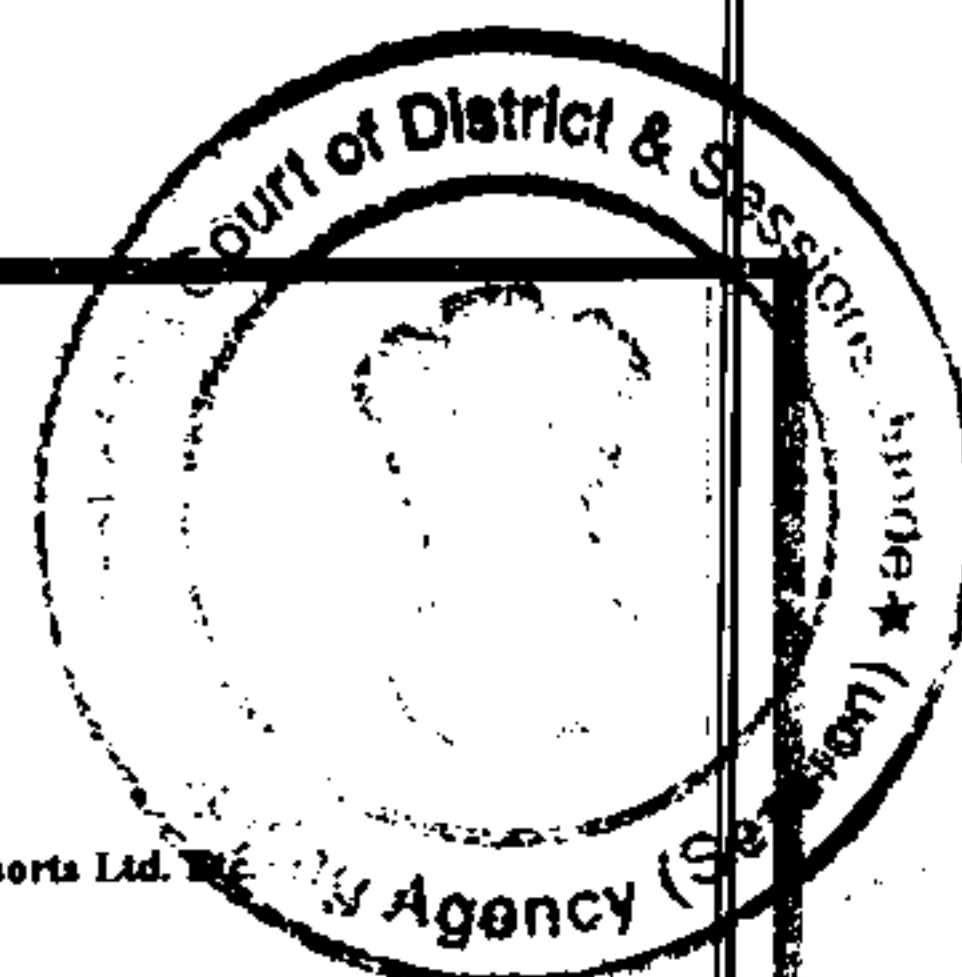


October 15, 1999 and as per Regulation 5 of the CIS Regulations, any person who was operating the collective investment schemes has to make an application to the Board within two months from the date of regulations to seek registration of certificate. But admittedly, in the present case, company accused had not moved any such application. Since, company accused had not moved any application in accordance with regulation 5 of the CIS Regulations, thus, as per Section 73 of CIS Regulations company accused was liable to refund the amount to the investors and submit the winding up and repayment report with the SEBI on prescribed format. Admittedly, company accused has not submitted any such report till the filing of the present criminal complaint, thus, company accused had not only violated Regulation 5 but also violated Regulation 73 of the CIS Regulations which amounts violation of Section 24(1) of the SEBI Act.

14. As per letter dated May 11, 1998, which has sent to the SEBI pursuant to the press release and said letter is exhibited as Ex. CW1/5. As per the said letter, company accused had mobilised funds to the tune of ₹ 2.10 lac from general public. By its letter dated December 20, 1999 which is exhibited as Ex. CW1/9, company accused further intimated the SEBI that company accused had mobilized the funds to the tune of ₹ 2.14 lac from general public through various CIS. Thus, it becomes crystal clear that company accused had mobilized the said funds in violation of Section 12(1B) of the Act as well as Regulation 5 & regulation 73 of the CIS Regulations.

15. Company accused had also furnished the list of its directors to the SEBI through its letter dated April 20, 1998 and the same is

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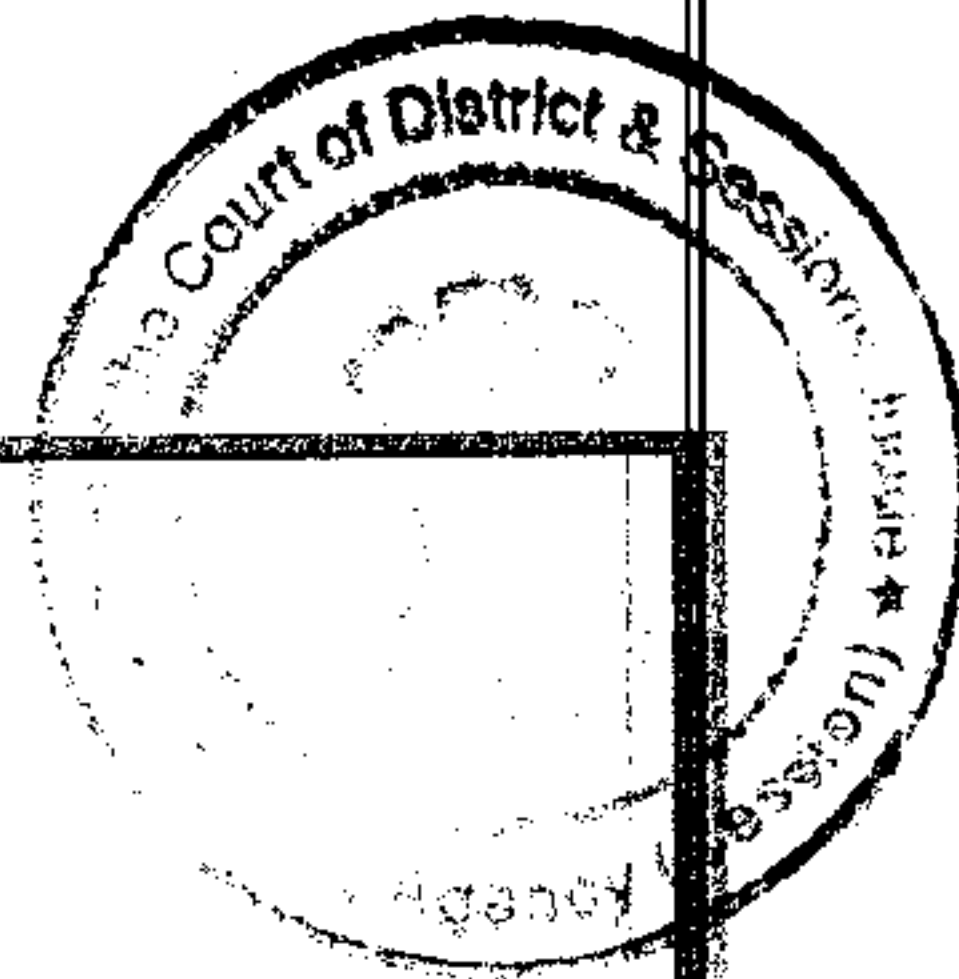
marked Ex. CW1/3. Perusal of the same reveals that A2, A3 & A4 were the directors of the company accused. The name of A2 and A3 is also mentioned as first directors in Memorandum and Articles of Associations of company accused. Though accused persons took the plea that they had resigned from the directorship of company accused, yet during trial, they failed to lead any evidence in their defence. Moreover, their contention is that they had resigned in the year 1998-1999. Since, company accused had already committed the offence by mobilizing funds in violation of provisions of SEBI Act, thus they had already committed the offence in terms of Section 27 of SEBI Act.

16. **Thus**, it is established that A2, A3 & A4 were the directors of the company accused and being the directors, they were the persons in-charge of, and responsible to, the company accused for the conduct of its business. Moreover, to raise funds from general public was the act of the Board of Directors, no individual director was competent to raise any fund from general public on behalf of company unless the decision is taken by the Board of Directors. On perusal of the balance-sheet, which is part of Ex. CW1/5 reveals that all three accused persons had also signed the same which further proves that they were involved in the day to day affairs of the company accused. Thus, being the directors, A2, A3 & A4 were the persons in-charge of, and responsible to, the company accused for the conduct of its business relating to mobilizing the funds.

17. **Pondering** over the ongoing discussion, I am of the considered opinion that complainant has succeeded to prove that company accused (A1) had mobilized funds in violation of Section 12 (1B) of the

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A handwritten signature "S. D. P." followed by the date "14/2/12" written below it.



SEBI Vs. SEPL Motel & Resorts Ltd. Etc.

SEBI Act and also violated Regulation 5 & Regulation 73 of CIS Regulations which is punishable under Section 24 (1) of the SEBI Act. Complainant has also succeeded to prove that A2, A3 and A4 being the directors of company accused (A1) were the persons in-charge of, and responsible to, the company accused for the conduct of its business at the time of committing the above violations, thus in terms of Section 27 of the Act, they are also liable for the above violations. Accordingly, I hereby hold them i.e. A1 SEPL Motel & Resorts Ltd, (company accused) ,A2 Sh. Ramadhar Sharma, A3 Sh. Rajiv Dutta and A4 Sh. Ratneshwar Prasad guilty for the offence punishable under Section 24 (1) read with section 27 of the SEBI Act.

**Announced in the open Court
on this 8th day of February 2012**

(Signature)
(PAWAN KUMAR JAIN)
ADDITIONAL SESSIONS JUDGE-01

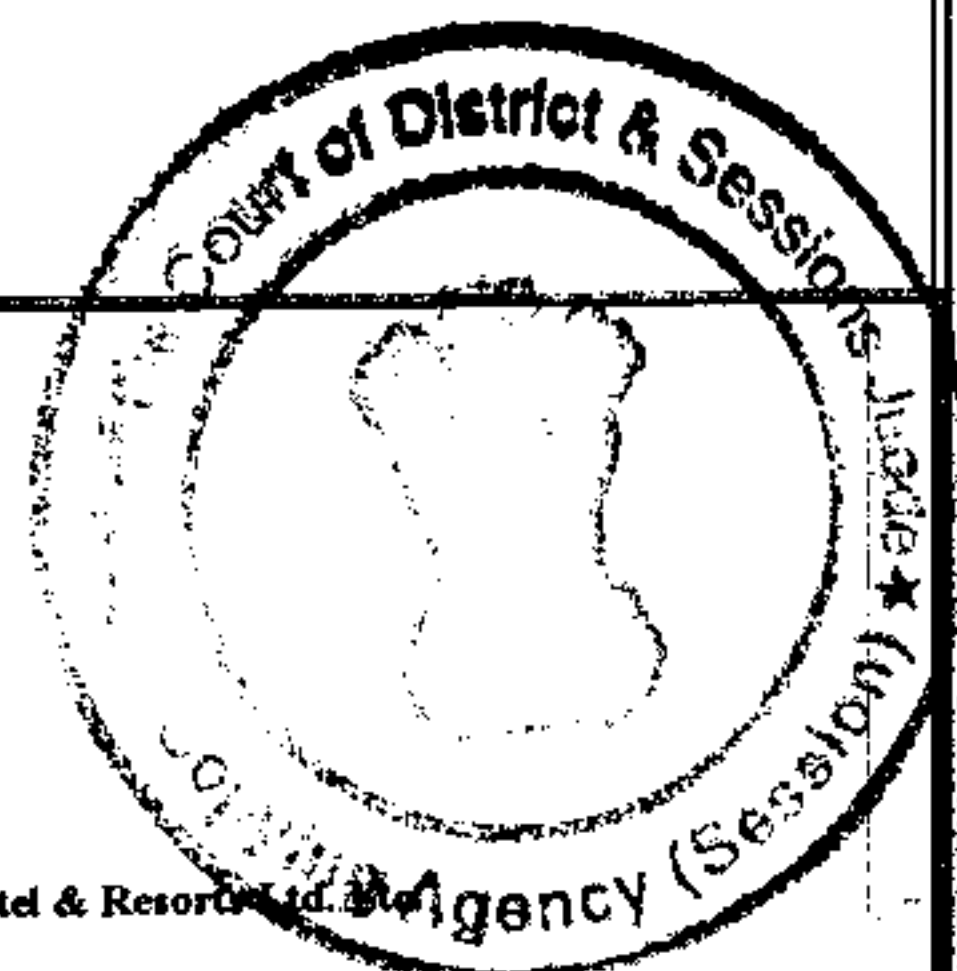
CENTRAL/THC/DELHI

*Copy given to the Convict
in open Court at 4.00*

*received the copy of 10/2/12
order passed on 08/02/12
for accused No-1 and 2.
Sharma
10/02/12*

ATTACHED

(Signature)
14/2/12
Copy to be sent (Remand)



SEBI Vs. SEPL Motel & Resorts Ltd. & Agency (Sessions)

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

**Complaint Case No. 29 of 2010
ID No: 02401R5171492004**

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. Rekha Verma, Manager, SEBI.

Versus

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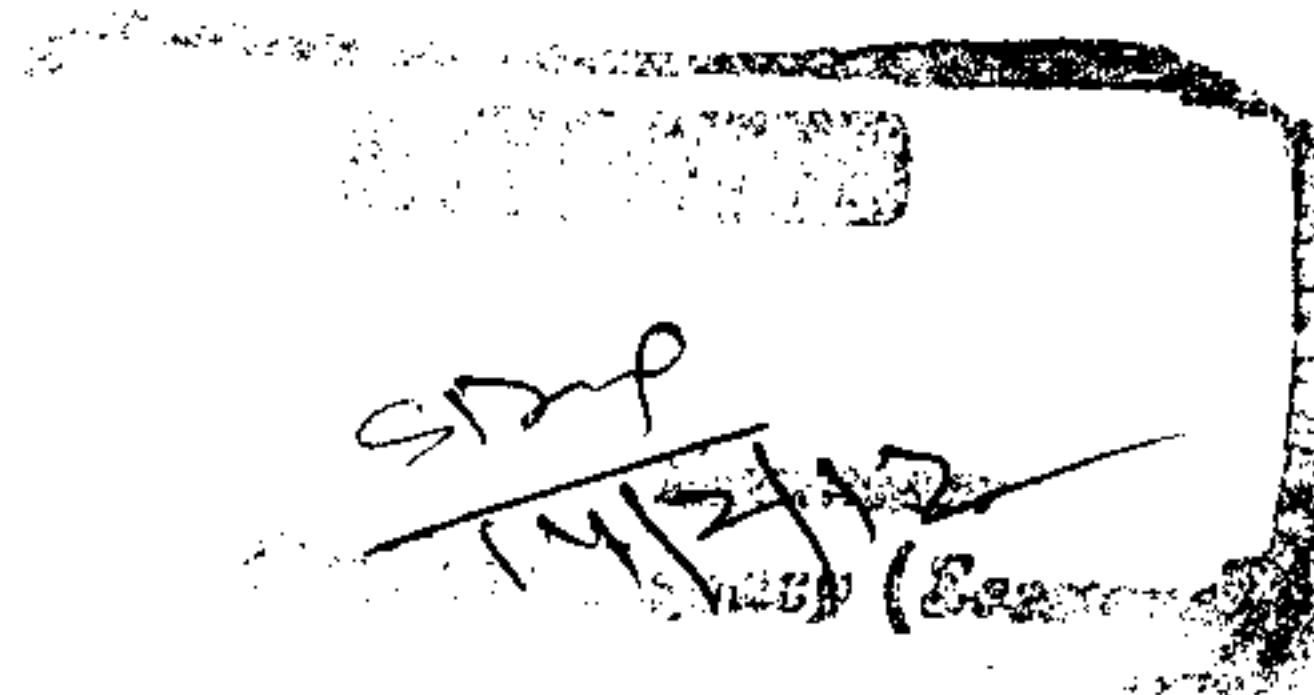
.....Convict no.1

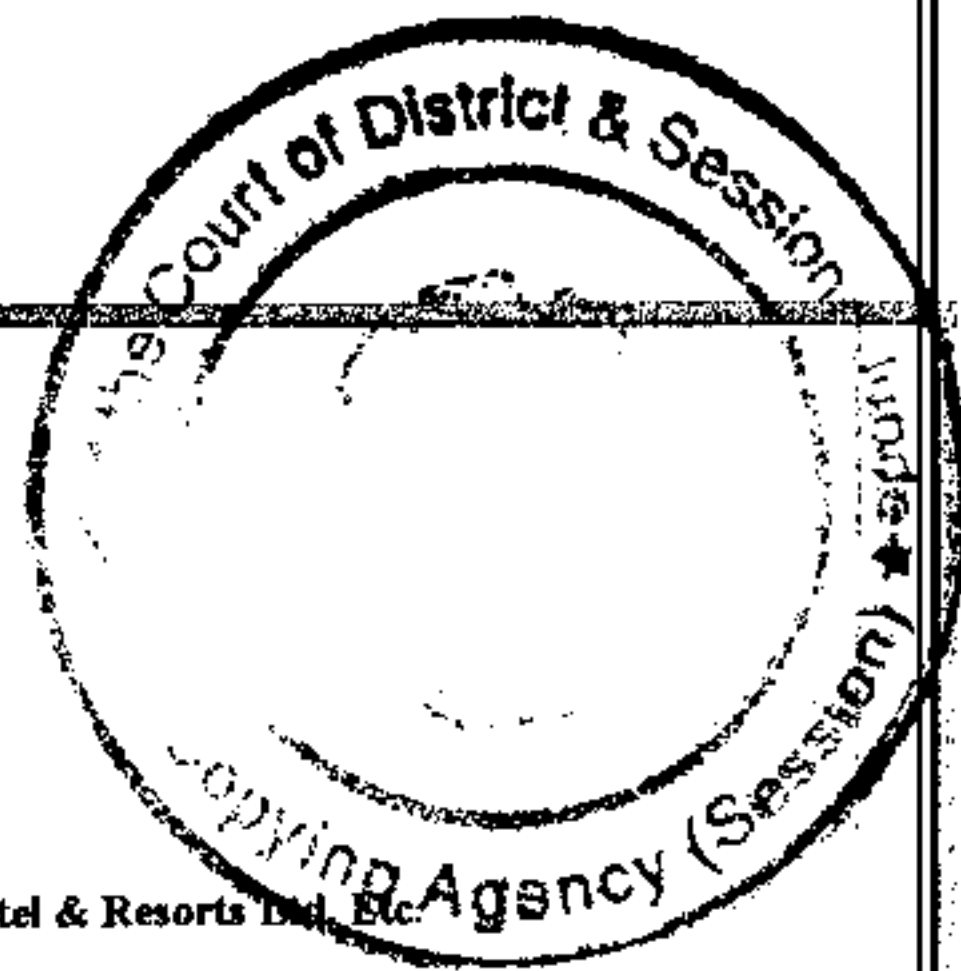
2. **Sh. Ramadhar Sharma (Director)**
S/o Sh. Suraj Deo Sharma,
R/o Bhagirathi, P.O.Mahendru,
PS Sultanganj, Patna-800 007

.....Convict no.2

3. **Sh. Rajiv Dutta (Director)**
S/o Late Sh. Saket Bihari Dutta
R/o Patherighat, Patna

.....Convict no.3





SEBI Vs. SEPL Motel & Resorts Ltd. Etc.

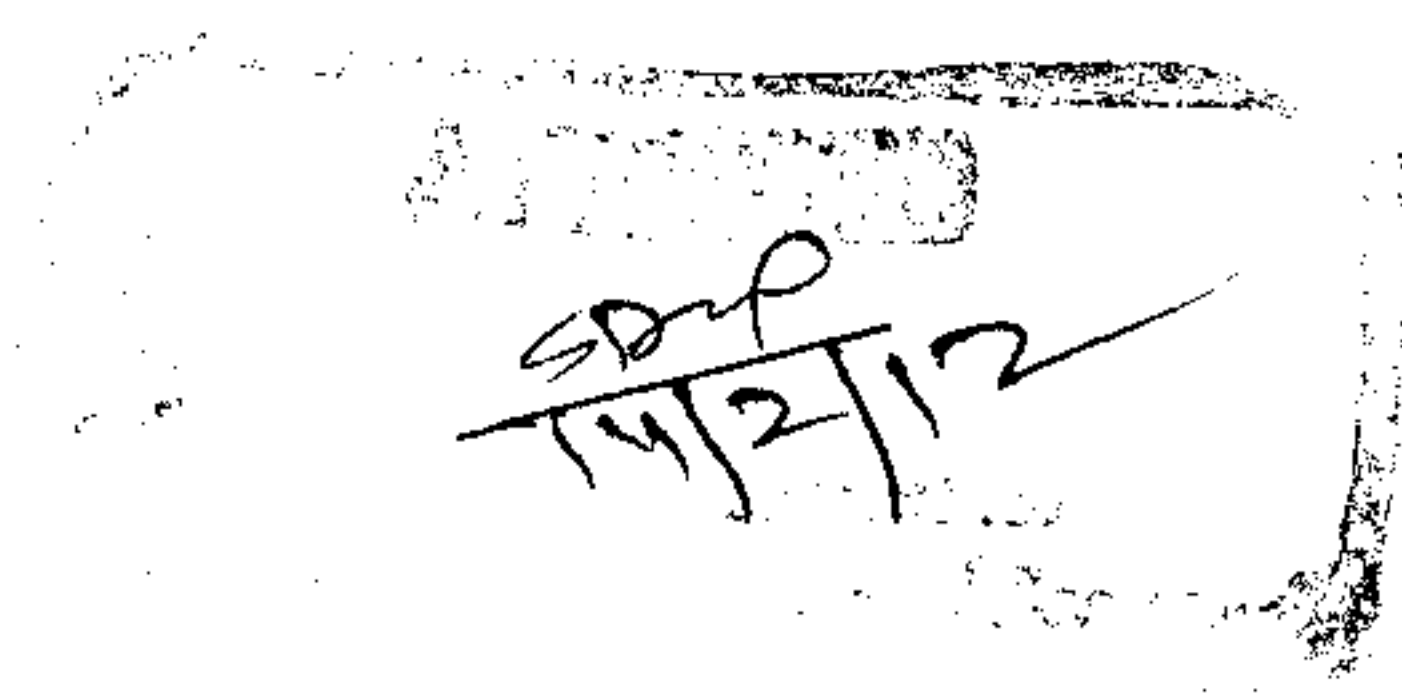
4. **Sh. Ratneshwar Prasad (Director),**
S/o Sh. Baidhyanath Prasad,
R/o Block No. 15, Flat no. 126,
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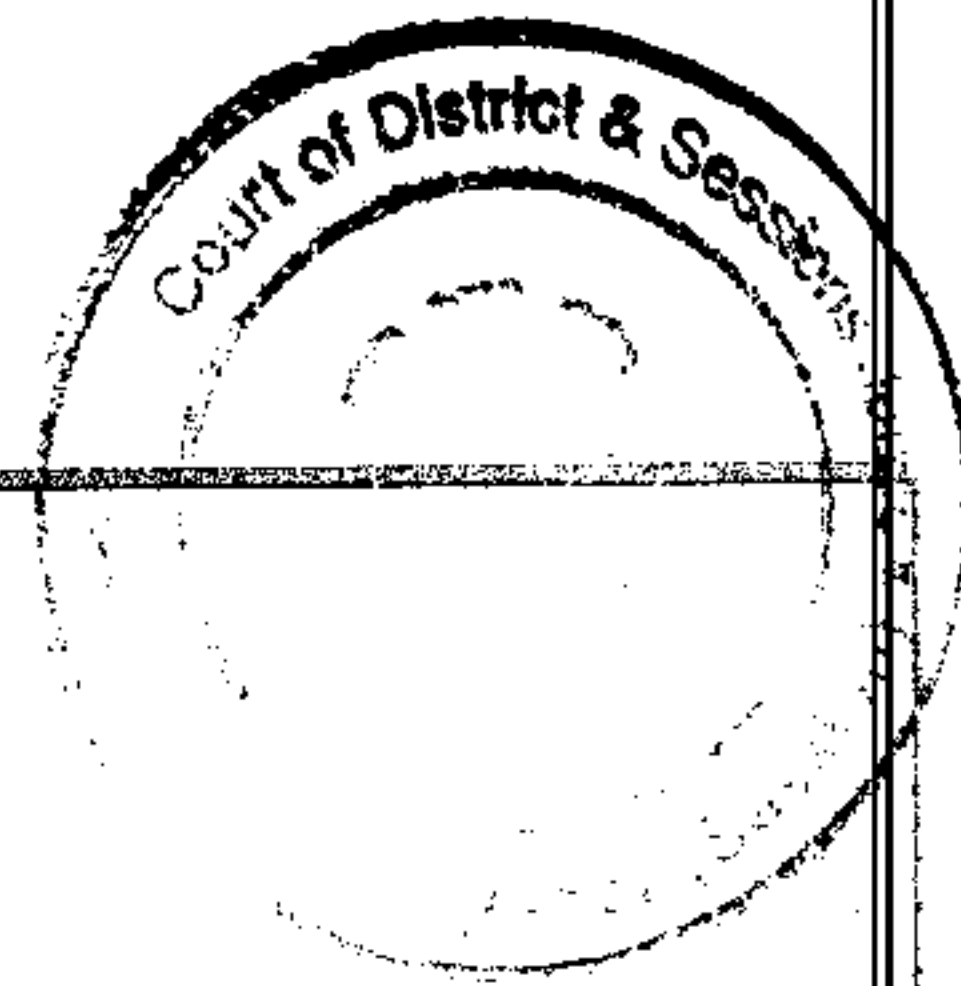
.....Convict no.4

Present: Sh. Sanjay Mann, Advocaes, Counsel for SEBI.
Sh. Manoranjan Sharma, Advocate, Counsel for
convict no. 1 & 2
Sh. Amit Kumar, Advocate, Counsel for convict no. 3 & 4

ORDER ON THE POINT OF SENTENCE(ORAL):

1. **Vide** separate judgment A1 i.e. Company accused, A2, A3 and A4 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 there is no previous criminal involvement of convicts and they are the sole bread earner of their respective families. It is further submitted the amount has already been refunded to the investors and no investor had filed any complaint with the SEBI till date. Learned counsel for complainant fairly conceded that SEBI has not received any complaint from any of the investors till date.
3. I have heard Counsel for both parties, perused the record carefully and gave my thoughtful consideration to their submissions.





SEBI Vs. SEPL Motel & Resorts Ltd. Etc.


4. **Considering** the quantum of amount mobilized by the company accused and the fact that convicts are facing trial since 2004, I am of the opinion that ends of justice will be met if convicts be burdened with some amount of fine. Accordingly, I hereby impose a fine of ₹ 20,000/- on each of the convicts in default convict no. 2, 3 & 4 shall undergo three months simple imprisonment for the offence punishable under Section 24(1) of the SEBI Act.
5. **Fine** amount is paid.
6. **Copy** of judgment along with order on the point of sentence be given to the convicts/their counsel free of cost.
7. **Since** accused no.5 is proclaimed offender, file be consigned to record room with direction that same be revived as and when he is apprehended.

**Announced in the open Court
on this 8th day of February 2012**


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

*Copy given to the Convict
in open Court at JWC.*

*received the copy of
order passed on 08/02/12
for accused No 2 and 3
Sharma
10/02/12*

Office of The District & Sessions Judge Delhi.	
Certified to be True Copy	
	
Date	Examining Agency (Sessions)
Authorised under Section 78 of the Indian Evidence Act-1978	