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IN THE COURT OF Sh. PADAM KANT SAXENA,
ADDITIONAL SESSIONS JUDGE: DELHI.

CC No.32/03 (Old)

CC No. 13/04 (New)

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,

Smt. Jyoti Jindgar

.....Complainant.



Versus

Sparrow Agro Forest Ltd. a company
incorporated under the Companies Act,
1956, having its Registered Office at SCO
176, Red Square Market, Hisar,
Haryana-125001

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EXAMINER

2. Sh. Daya Nand Saini,

S/o Not known to the complainant;

Occupation : Managing Director of Accused No. 1,
resident of 11, Adrash Nagar, Gangwa
Road, Hissar.

3. Sh. Balbir Singh Saini,

S/o Not known to the complainant;

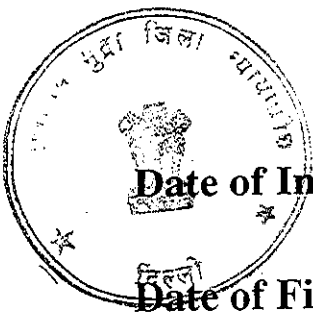
Occupation : Director of the Accused No. 1,
resident of 11, Adrash Nagar, Hissar.

4. Sh. Arvind Kumr Bansal

S/o Not known to the complainant;

Occupation : Director of the Accused No. 1,
resident of Purani Mandi, Narnaul,

Dist- Mohendargarh, Haryana. Accused



Date of Institution : 21.01.2003

Date of Final Arguments : 29.10.2007

Judgment reserved on : 29.10.2007

Date of Judgment : 31.10.2007

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JUDGMENT

1. The complaint dated 21.01.2003, subject matter of the instant case, had been filed by Securities and Exchange Board of India, (for short referred to as 'SEBI') on that date before Ld. ACMM, Delhi consequent upon which all accused were ordered to be summoned.

2. In pursuance of order no. F.3 (4)/ADJ/756570 dated 04.12.2004, passed by Ld. District and Sessions Judge, Delhi, the complaint case in question came to be transferred to this court by ld. ACMM, Delhi vide order dated 13.12.2004 .



3. * Briefly stated, case of the complainant, as disclosed in the complaint is that accused no.1 of which accused nos. 2 to 4 were the Directors, had

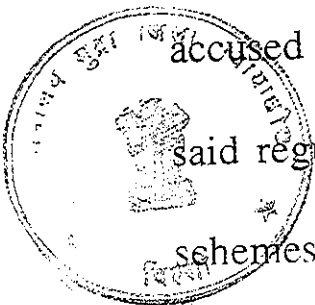
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BY A. K. SHARMA

floated collective Investment Schemes and also collected funds from the investors to the tune of Rs.0.965 Crores without obtaining registration under Section 12(1B) of Securities & Exchange Board of India Act, 1992 (for short referred to as 'the Act'), that in terms of that SEBI in the year 1999 notified regulations for the regulation of the activities of collective investment schemes, titled as Securities and Exchange Board of India (Collective Investment Schemes) Regulations, 1999 (hereinafter referred to as 'CIS Regulations' or 'the said regulations'), that in terms of Regulation 73 (1) of the said regulations, an existing collective investment scheme which failed to make an application for registration with SEBI, would wind it up and repay the amounts collected from the investors, that

accused no.1 neither applied for registration under the said regulations nor took any steps for winding up the schemes and repayment to the investors as provided under the regulations and as such had violated the



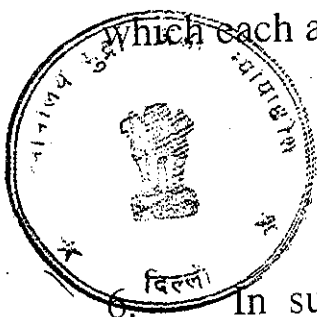
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provisions of Sec.12 (1B) of the Act, and Regulation 5 (1) read with Regulation 68(1), 68 (2), 73 and 74 of the said regulations and hence the present complaint.

4. During the course of proceedings, no appearance was put on behalf of accused no.4 and vide order dated 04.05.2006, he i.e. accused no.4 was declared proclaimed offender. Further in terms of the said order evidence under Section 299 Cr.P.C., 1973 was ordered to be recorded against him.

5. After appearance of accused nos. 1 to 3 notice dated 17.03.2006 was given to accused nos. 1 to 3 to



which each accused pleaded not guilty and claimed trial.

6. In support of its case, complainant examined only one witness whereafter Ld. Counsel for the

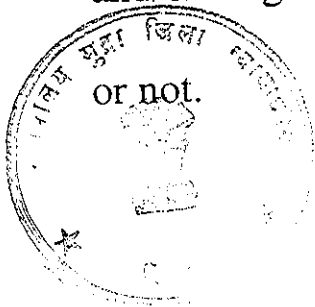
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complainant closed his evidence. Thereafter statements of accused were recorded separately.

7. The accused in support of their defence examined only one witness. Thereafter ld. defence counsel closed his evidence.

8. I have heard ld. counsel for the parties and have gone through the records carefully.

9. The question that arises for consideration is, whether any violation of the provisions of the Act and/or Regulations had been committed by the accused



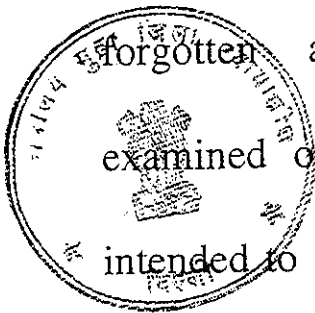
10. Now the first point that needs to be looked into

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EXAMPLE

is, whether accused had been running collective investment scheme/schemes as contemplated by the Act and/or CIS Regulations or not.

11. In the complaint in question in paragraph 6 thereof it has been categorically stated that accused no.1 had been running the collective investment schemes and raised an aggregate amount of Rs.0.965 crores from the general public.

12. Before analysing the evidence available on record, it would be useful to note that there is an important rule of evidence which must never be forgotten and that is, that the witness must be cross-examined on all parts of his testimony which it is intended to dispute, otherwise what the witness says in his examination-in-chief will be accepted as true.



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(Refer State Vs. Meena Kumari, 1986 RLR 319).

13. Now let us consider the evidence available on record. Ms. Jyoti Jindgar CW-1 in her deposition recorded before this court testified inter alia as follows:-

.....SEBI issued a Press Release dated 26.11.1997 and a public notice dated 18.12.1997 directing the companies which were running CIS to file information with SEBI regarding their schemes, such as, details of funds mobilized, names of directors/promoters etc., in case they were desirous of obtaining benefits of Sec. 12(1B) of SEBI Act. Pursuant to this, company filed information vide their letter dated 01.05.1998 with SEBI regarding CISs which is Ex. CW-1/1 which runs to 35 pages. As per the said letter, the company has mobilized Rs.96,48,506/- under

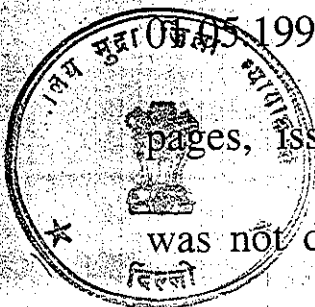


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its CIS. The company also submitted names and addresses of its Directors/Promoters, photocopy of application form and promises and assurances made in their various schemes. As per this letter the directors were Sh. Daya Nand Saini, Sh. Balbir Singh Saini and Sh. Arvind Kumar bansal. Sh. Santosh Saini, Sh. Karan Singh Saini, Sh. Kamlesh Saini, Sh. Dhanraj Sharma were stated to be promoters of the company...."

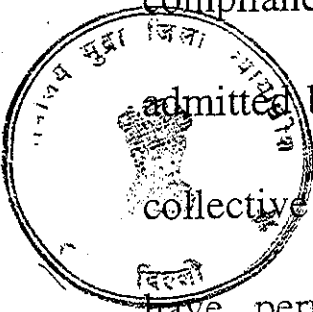
14. CW-1 Ms. Jyoti Jindgar was cross-examined by learned defence counsel for accused nos. 1 to 3 wherein genuineness and authenticity of Ex. CW-1/1 dated 05.05.1998 and its annexures, running into thirty five pages, issued by accused no.1 to the complainant SEBI, was not disputed. Therefore, contents of Ex. CW-1/1 and its enclosures are deemed to have been accepted as



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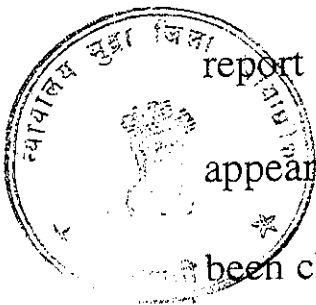
correct. In the business statement for the financial year 1997-98 appended to Ex. CW-1/1, accused no.1 admitted that a sum of Rs.96,48,506.00 had been accepted by it through various schemes in that year i.e. in the year 1997-98. In another annexure appended to Ex. CW-1/1 names, addresses, designations and occupations of seven persons associated with accused no.1 company were mentioned. This document shows that names of accused nos.2 and 3 and were mentioned at sl. nos. 1 & 2 thereof. According to it, accused no.2 was the 'managing director' while accused no.3 was 'director' of accused no.1. Further Ex.CW1/1, itself is a letter which was issued by accused no. 1 on 1.5.98 . It was received by SEBI on 4.5.1998. As mentioned in the compliance certificate appended to Ex.CW1/1 it was admitted by accused no.1 that at least till 01.05.1998 collective investment schemes were being run by it. I have perused the cross-examination of this witness at the hands of accused but no where it was put to her i.e.



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CW 1 Ms. Jyoti that Ex.CW1/1 and its annexures were not issued by accused no.1. Further genuineness and authenticity thereof was also not challenged. Even accused nos. 2 and 3 in their respective statements recorded under Section 313 Cr.P.C., 1973 while replying to question no. 3 in fact admitted that accused no.1 company had collected Rs.96,48,506.00 from the public under collective investment schemes.

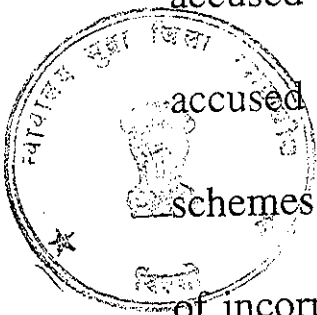
15. Further CW.1 in her examination in chief inter alia had testified that accused no.1 neither applied for registration nor intimated SEBI regarding winding up of its schemes. She further testified that SEBI had directed accused no.1 to repay the investors but still no report was filed. These portions of deposition of CW1 appearing in her examination-in-chief have also not been challenged in her cross-examination.



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16. Therefore in the face of the law laid down in the case of State Vs. Meena Kumari (Supra) on account of non challenge to the portions of deposition of CW1 Ms. Jyoti as contained in her examination-in-chief and to which a reference has been made in my two previous paragraphs, ^{the same} are deemed to have been accepted as true and the court can safely act on the same.

17. In the face of the available evidence on record which has also been referred to hereinbefore, I hold that SEBI has been able to prove that accused nos. 2 and 3 were managing director and director respectively of accused no.1. It also stands proved on record that accused no.1 had floated its collective investment schemes before 01.05.1998 without obtaining certificate of incorporation as contemplated by Section 12 (1B) of the Act. SEBI has also been able to prove on record that despite notification of CIS Regulations w.e.f.

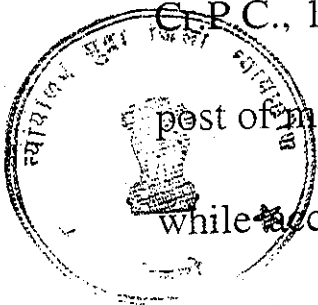


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15.10.1999, accused no.1 neither got itself registered with SEBI nor wound up its activities. It has been further proved on record that accused no.1 also did not repay the collected amount of Rs.96,48,506/- to the investors.

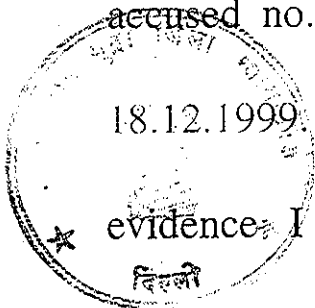
18. No defence was raised by the accused in the cross-examination of CW-1 Ms. Jyoti, to the effect that accused no.1 was either registered with SEBI or that its collective investment scheme had been wound up or that repayments had been made to investors. Even in their statements under Sections 313 Cr.P.C., 1973 no such defences were raised. The only defence raised by accused in their respective statements under Section 313

Cr.P.C., 1973 was that accused no.2 resigned from the post of managing director of accused no.1 on 18.12.1999 while accused no.3 resigned from the post of director thereof w.e.f. 18.12.99.



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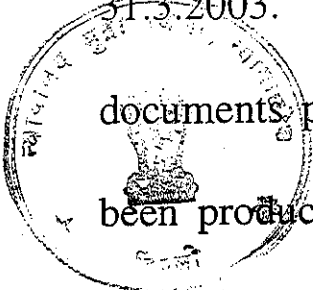
19. All these aforesaid facts mentioned in the preceeding paragraph were in the special knowledge of these accused i.e. accused nos. 2 and 3 and therefore onus of proof was on them to prove that accused no.1 was registered with SEBI, that it had wound up its collective investment schemes and repaid to its investors and that accused nos.2 and 3 had resigned from accused no.1 w.e.f. 2.11.1998 and 18.12.1999 respectively. No such documentary evidence has been filed by the accused on record. Even relevant Form nos.32 have not been proved on record by the accused to show that accused no.2 resigned from the post of managing director of accused no.1 on 2.11.1998 while accused no.3 resigned from the post of director on 18.12.1999. So on account of non production of this evidence I draw an adverse inference against the accused to the effect that either no such documents



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existed or that even if they existed, the same would not have supported the defence of the accused. So no reliance can be placed on this portion of the defence of the accused and is therefore rejected.

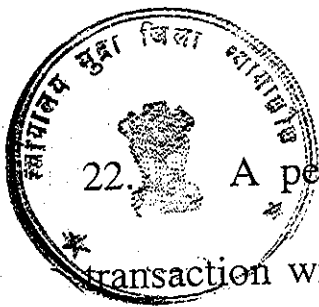
20. It may also be pointed out that accused had examined DW.1 Shri Natha Ram as their sole defence witness. This witness claimed to have worked as a clerk with accused no.1 w.e.f. April, 2003 to September, 2003. He produced photocopies of audited reports for the years 1997-98, 1998-99, 1999-2000 and 200-2001 of accused no.1. He also produced photocopies of a list of investors whose money according to him, had been returned by accused no.1 between 1.4.2001 to 31.3.2003. It is significant to note that the original documents pertaining to the said photocopies have not been produced in the Court. So no reliance can be placed on the same. However, as per his admission it is



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clear that even in the year 2003 activities of accused no.1 were in operation. In any case DW 1 was not even in the employment of accused no.1 when the alleged payments to investors were made between April 2001 to 31.03.2007. It is also not the defence of accused that winding up and repayment report as contemplated by Regulation 73 of CIS Regulations had been filed with SEBI. So it does not help the case of the accused at all.

21. Now accused no.1 is a company. Admittedly accused nos. 2 to 4 were its directors on or about 01.05.1998 and continued to be so even at the time of filing the complaint i.e. on 21.01.2003.



22. 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. It is well settled that if any

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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. This was so held by the Apex Court in the case of N. Rangachari Vs. BSNL (2007) 5 SCC 108. Therefore in the face of the said law laid down by the Apex Court, I hold that accused nos. 2 and 3 who were managing director and director respectively of accused no.1, are presumed to be in charge of its affairs i.e. of accused no.1 company particularly when accused nos. 2 and 3 have failed to prove that they were not in charge of its affairs i.e. of accused no.1 or that any restrictions had been placed upon their powers by the memorandum or articles of association of accused no.1.



Section 27 of the Act deals with the commission of offences by the company. According to sub section (1) thereof if an offence has been committed

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by a company, then every person who at the time of commission of the offence was in charge and was responsible to the company for conduct of the business, as also the company shall be deemed to be guilty of offence. The proviso appended to sub section 1 is not applicable in the present case since as already stated, accused nos. 2 and 3 have failed to prove that the collective investment schemes in question were being run or that the funds which had been mobilized thereunder or that the WRR had not been filed without their knowledge or that they had exercised all the diligence to prevent the commission of the offence. In fact, in the face of the evidence available on record, it is clear that the accused nos. 2 and 3 being in charge of



affairs of accused no.1 had been running collective investment schemes on or before 01.05.1998 when FVW 1/1 was issued by accused no.1 and sent to SEBI. The Regulations came into force w.e.f. 15.10.1999. Accused nos. 2 and 3 continued to be

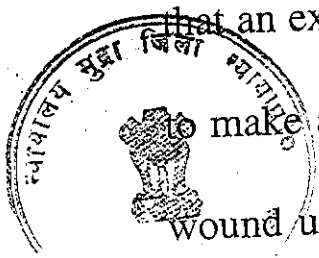
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24. Now, as already stated, as per Section 12 (1B) of the Act any person carrying on a collective investment scheme without a certificate of registration from SEBI, in accordance with Regulations is liable to be punished under Section 24 of the Act. As per certificate of incorporation placed in the memorandum of articles of association, accused no.1 stood incorporated on 06.03.1997. Therefore question of applicability of Securities Laws (Amendment) Act, 1995, which came into force w.e.f 25.01.1995 and reference to which has been mentioned in the proviso appended to Section 12 (1B) of the Act, does not arise.

As per Ex. CW-1/1 dated 01.05.1998 issued by accused no.1 and sent to SEBI, accused no.1 had been running

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collective investment schemes and had also mobilized funds from the investors. I have already held that accused no.1 continued to run the said schemes and did not wind up. The regulations came into force w.e.f. 15.10.1999. Now as per regulations accused no.1 should have made an application for grant of a certificate within a period of two months w.e.f. 15.10.1999. Admittedly that was not done. As per Regulation Section 68, accused no.1 should have filed application for registration of the schemes. Now since accused no.1 did not obtain registration provisional or otherwise, therefore as per regulation 74, accused no.1 should have formulated a scheme of repayment and also made repayments to investors. Regulation 73 lays down that an existing collective investment scheme that failed to make an application, then the same should have been wound up, the information sent to investors within two months i.e. up to 15.12.1999. As per SEBI regulation 73,



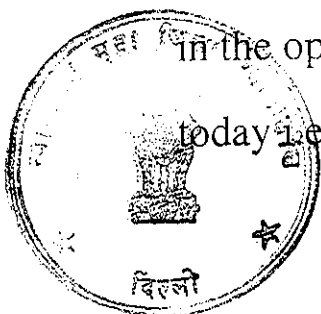
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had been running collective investment schemes and also mobilized funds without getting the same registered with SEBI and also failed to wind up, repay the investors and file winding up and repayment report. Hence accused nos. 1 to 3 are held guilty under Section 24 of the Act.

Dictated and announced

in the open court

today i.e. on 31.10.2007



(PADAM KANT SAXENA)
ADDITIONAL SESSIONS JUDGE:
DELHI.

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31/10/07
EXAMINED

SEBI v/s Sparrow Agro Forest & others

(क) आवेदन पत्रों संख्या 218/07 31/10/07

(ग) प्रारंभिक प्रत्युत्तर करी की तारीख 31/10/07

(घ) प्रारंभिक प्रत्युत्तर की तारीख 31/10/07

(ङ) प्रारंभिक प्रत्युत्तर की तारीख 31/10/07

(च) प्रारंभिक प्रत्युत्तर की तारीख 31/10/07

(ज) प्रारंभिक प्रत्युत्तर की तारीख 31/10/07

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(ड) प्रारंभिक प्रत्युत्तर की तारीख 31/10/07

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अला एवम् सत्र न्यायाधीश अतिरिक्त न्यायाधीश दिल्ली
दिनांक 31/10/07
भारतीय संघ का प्रतिनिधि
16 के अधीन अधिनियम

दिनांक

31/10/07

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CC 34/2004 (New)

SEBI
others.

Versus

Sparrow Agro Forest Ltd. and

ORDER ON SENTENCE

Vide judgment dated 31.10.2007, passed today accused nos. 1 to 3 have been held guilty under Section 24 of the Securities and Exchange Board of India Act, 1992 for violating its provisions and the provisions of Securities and Exchange Board of India (Collective Investment Schemes) Regulations, 1999.

Arguments on the point of sentence have been heard. Sh. S.S.Saini, Advocate for convict nos. 1 to 3 has argued that the investments to the tune of Rs.96,48,506/- made by public/investors already stand repaid and no investor made any complaint regarding non refund of money. Therefore there is a prayer for taking a lenient view in the matter.

Vide judgment passed today, it has been held by this Court that convict nos. 2 and 3 being managing director and director respectively of convict no. 1 were presumed to be in charge of and

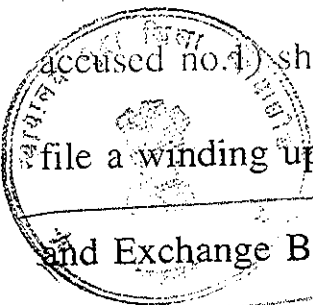


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responsible to it i.e. convict no.1 for its affairs. It has been further held in this judgment that convict nos. 1 to 3 failed to lead any evidence to show that there was any restriction on their powers. Also vide the said judgment it was held that convicts failed to prove that repayments had been made to investors and in fact winding up and repayment report was also not filed with Securities and Exchange Board of India.

In the face of aforesaid facts, I am satisfied that no fruitful purpose shall be served by sending the convict nos. 2 and 3 to jail. Therefore each one of them, viz. Convict nos. 1 to 3, is ordered to pay a fine of Rs.6,000/- and in default of payment thereof, the defaulting convicts (except convict no.1) would undergo S.I. for one month. In addition, in exercise of my powers under Section 359 of Code of Criminal Procedure, 1973, I also order that each convict shall also pay a sum of Rs.2,000/- to the complainant for defraying the cost incurred by it in the prosecution and in case of default, the defaulter (except accused no.1) shall undergo S.I. for 15 days. The convicts shall also file a winding up and repayment report as contemplated by Securities and Exchange Board of India (Collective Investment Schemes), 1999



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within two months with Securities and Exchange Board of India who shall get the same audited and would be free to initiate further action thereon, if any, as per law. Bail bonds of convict nos. 2 and 3 would stand cancelled and their sureties shall stand discharged after payment of aforesaid fine and cost.

File be consigned to Record Room. Copies of judgment and this order passed today be given to each convict, free of cost.

Accused no. 4 is a proclaimed offender. Therefore vis-a-vis this accused, file be consigned to record room with a liberty to the complainant to get it revived as and when accused no. 4, Sh. Arvind Kumar Bansal is arrested.



today i.e. on 31.10.2007

sd/-
(PADAM KANT SAXENA)
ADDITIONAL SESSIONS JUDGE:
DELHI.

ATTESTED
37/11/07
EXAMINER