

**IN THE COURT OF MS. VANDANA JAIN:
ADDL. SESSIONS JUDGE-03/SPECIAL JUDGE
(COMPANIES ACT), DWARKA COURTS, NEW DELHI.**

(More than 22 years old)

CNR No.DLSW01-007663-2023

CC No.745/2023

SEBI Vs. Neelgiri Forests Ltd. & Ors.

Security 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 Block No.1,
Rajendra Bhawan, Rajendra Place District Centre,
New Delhi-110008 and represented by its
Asstt. General Manager Ms. Jyoti Jindgar.

.....Complainant

Versus

- 1. Neelgiri Forest Ltd,**
a company incorporated under the provisions of
Companies Act, 1956 and having its
registered office at 2385, Sector 44D,
Chandigarh-160022.
- 2. Sh. Rohtas Saini,** S/o not known,
Director of accused No.1,
R/o 51, Sector-12A, Panchkula.
(Proceedings already abated vide order dated 26.05.2023)
- 3. Sh. Rupesh Saini,** S/o not known,
Director of accused No.1,
R/o 489, Sector-12A, Panchkula.
(Already declared P.O. vide order dated 05.10.2012)
- 4. Smt. Rajnesh Prabha,** W/o not known,
Director of accused No.1,
R/o 489, Sector-12A, Panchkula.
(Already declared P.O. vide order dated 05.10.2012)

5. **Sh. Pratap Singh Verma**, S/o not known,
Director of accused No.1,
R/o C-116, Ghanshyam Puri, Aligarh.
(Already declared P.O. vide order dated 20.07.2012)
6. **Sh. Ranbir Singh**, S/o not known,
Director of accused No.1,
R/o 11, Adarsh Nagar, Hisar.
7. **Sh. Anant Varshney**, S/o not known,
Director of accused No.1,
R/o 9/30, Kanwari Ganj, Aligarh.

.....Accused Persons

Date of Institution of complaint	: 24.12.2001
Date of Arguments	: 16.03.2024
Date of pronouncement	: 08.04.2024

JUDGMENT

Facts

1. Succinctly stated, the accused No.1 company namely Neelgiri Forest Ltd. was running a Collective Investment Scheme (hereinafter referred to as 'CIS') and raised an aggregate amount of Rs.2.025 crores from the general public. The private entrepreneurs had undertaken plantation activities on a commercial scale, however, the promoters themselves invested a minimum amount in such ventures and raised the majority of funds from ordinary investors in the absence of any regulatory mechanism. The companies promised high returns coupled with the fiscal incentives which helped these companies to mobilize large amounts over a period of time.

2. The Government of India, after detailed consultations with

the regulatory bodies, decided that an appropriate regulatory framework for regulating entities, which issue instruments like Agro Bonds, Plantation Bonds etc., has to be put in place. A press release was issued by the Government on 18.11.1997, conveying that such schemes should be treated as Collective Investment Schemes coming under Security and Exchange Board of India Act, 1992 (hereinafter referred to as 'SEBI Act'). In order to regulate such collective investment schemes, both from the point of view of investor protection as well as promotion of legitimate investment activity, Security and Exchange Board of India (hereinafter referred to as 'SEBI') was asked to formulate the regulations for them.

3. SEBI in the year 1999 notified regulations for the regulation of the activities of CIS, titled as SEBI (CIS) Regulations, 1999 (hereinafter referred to as 'CIS Regulations').

4. Pursuant to the press release dated 26.11.1997 or public notice dated 18.12.1997, accused no.1 company filed information/details with SEBI regarding its CIS.

5. Accused No.1 failed to make any application with SEBI for registration of the CIS being operated by it as per regulations.

6. SEBI vide its letter dated 15.12.1999/29.12.199 and also by way of public notice dated 10.12.1999 gave intimation in terms of Regulation 73(2) to accused No.1 which casted an obligation on accused no.1 to send an information memorandum to all the investors detailing the state of affairs of the scheme,

amount repayable to each investor and the manner in which such amount was determined. As per the aforesaid letters of SEBI, the information memorandum to the investors was required to be sent latest by 28.02.2000, however, the said letters returned as undelivered with a message 'left without address'. SEBI vide another public notice published in newspapers on 22.02.2000 informed the company that all the companies carrying out CIS who had not made any application for grant of registration or were not desirous of obtaining provisional registration were required to compulsorily windup their existing schemes as per the provisions of Regulation 73(1) of the CIS Regulations.

7. Accused No.1 neither applied for registration under the CIS Regulations nor took any steps for winding up of the schemes and repayment to the investors as provided under the Regulations and had violated the provisions of Section 11B, 12(1B) of SEBI Act and Regulation 5(1) r/w Regulation 68(1), 68(2), 73 and 74 of CIS Regulations.

8. Subsequently, on 31.03.2000 SEBI issued a public notice in the newspapers inviting the attention of the accused No.1 company to the aforesaid position. Further, a notice dated 12.05.2000 was issued to the accused No.1 company calling upon it to show cause as to why the action as stated therein be not initiated against it for violations of the aforesaid provisions of law. However, the accused No.1 neither responded to the said public notice nor the subsequent show cause notice. Thereafter, the accused No.1 company was reminded by show cause notice dated 12.05.2000 and letter dated 31.07.2000 to wind up the

schemes and repay the amounts to the investors.

9. On 07.12.2000 SEBI, by exercising its powers conferred upon it under Sec.11B of Securities and Exchange Board of India Act, 1992, directed accused no.1 to refund the money collected under the aforesaid CIS of the Accused No.1 to the persons who invested therein, within a period of one month from the date of the said directions.

10. However, SEBI did not receive any information from accused No.1 as to whether it complied with the directions of SEBI and therefore, it was clear that the accused No.1 with dishonest intentions was evading the repayment of the amounts collected by it from the investors.

11. Therefore, the accused No.1 had committed the violation of Sec.11B, 12 (1B) of SEBI Act read with Regulation 5 (1), 68(1), 68(2), 73 and 74 of CIS Regulations which is punishable under Sec.24 (1) of Securities and Exchange Board of India Act, 1992.

12. The Accused No.2 to 7 are the directors and/or persons in charge of and responsible to the accused No.1 company for the conduct of its business and are liable for the violations of the Accused No.1, in terms of Sec.27 of SEBI Act.

Summoning

13. All the accused persons were summoned for the said offences. Accused No.1 company was directed to be prosecuted

under Section 305 CrPC vide order dated 23.09.2010. Accused Nos.6 and 7 duly appeared in the Court and rest of the accused persons failed to appear and finally accused No.2 to 5 were declared P.O. Accused No.2 was arrested later on and he also started contesting the case. Accused no.2 had expired during the trial and proceeding against him had been abated and therefore, the trial was conducted only qua accused no.1 company, accused no.6 and 7 and against rest of the accused persons under Section 299 CrPC.

Notice

14. Notice under Section 24(1) and 27 of SEBI Act, 1992 were framed accused No.2, 6 and 7 to which they pleaded not guilty. In his defence, accused No.2

15. In his defence, accused No.6 Ranbir Singh had stated that he never participated in any activity, business or management of the accused No.1. He resigned from the post of Director of accused No.1 on 24.01.1993 which was accepted by the company in the meeting of boards of its directors held on 25.01.1993 and intimation of the same was given to him vide letter dated 26.01.1993.

16. Further, in his defence, accused No.7 Anand Varshney had stated that he was Director of accused No.1 only for a limited period and he served his resignation to the company on 08.11.1998 which was duly accepted by the company on 20.11.1998 which was intimated to him through registered post. During his tenure of directorship with accused No.1, he never

took any financial decision on behalf of the company and did not sign any document on behalf of the company. He never participated in any board meetings and was not active in policy decision of the company. He was not aware of the alleged offence by the company as he had resigned much prior to the offence. In fact the company had failed to return his invested money in the company for which he had also initiated a civil suit for recovery in Aligarh Court in the year 2001 which was exparte decided in his favour in 2007.

17. Matter was thereafter listed for complainant evidence. During complainant's evidence, Ms. Versha Agarwal, Assistant General Manager, SEBI stepped into the witness box and examined herself as CW-1.

18. CW-1 Ms. Versha Agarwal had deposed as under:

“The government of India vide press release dated 18.11.97 decided that the companies that were issuing plantations bonds, agro bonds etc. will come under the purview of Collective Investment Scheme (CIS). In response, SEBI vide press release dated 26.11.97 and by public notice dated 18.12.97 directed the companies that were operating CIS to file information regarding the details of directors, the terms and conditions of their schemes, the details of the funds mobilized from investors etc. The accused company in response to the public advertisement dated 12.12.97 submitted information about its schemes with SEBI vide letter dated 14.01.98 and alongwith this letter the company submitted its brochure, list of board of directors and a certified copy of Memorandum and Articles of Association of Company. As per the letter accused no.2 was the Chairman-cum-Managing Director, accused

no.3 was the Administrative Director, accused no.4 was the Finance Director and accused no.5 to 7 were the Directors of the accused company. The accused no.2 to 7 were the persons incharge of the accused no.1 company and were responsible for its day to day affairs. The said letter alongwith its enclosure is Ex.CW1/1 (objected to by accused no.6 on the ground of mode of proof). During further correspondence, accused no.1 company vide letter dated 29.04.98 submitted a certified copy of MOA and AOA, name and address of all the directors and a compliance certificate from the Managing Director. The letter was signed by Chairman-cum- Managing Director. The said letter dated 29.04.98 alongwith its enclosure is Ex.CW1/2 (objected to by accused no.6 on the ground of mode of proof).

The accused no.1 company vide letter dated received on 09.06.98 submitted a certified copy of audited balance sheet as on 31.03.97. As per the balance sheet the investors' fund under the forestry scheme was Rs. 2,01,62,641.44/-. The said letter alongwith its enclosure is Ex.CW1/3, Later on accused no.1 company vide letter dated 24.06.98 submitted a list of assets created out of funds mobilized by the company till 31.03.97. The letter was signed by accused no.4 as the director. As per the letter the accused had created its assets to the tune of Rs.4,24,93,331.64/- till 31.03.97 out of the funds mobilized. The said letter dated 24.06.98 alongwith its enclosure is Ex.CW1/4 (two pages) (objected to by accused no.6 on the ground of mode of proof).

SEBI CIS Regulations, 1999 were notified on 15.10.99. The notification of the Regulations were intimated to the public vide press release dated 20.10.99. SEBI vide specific letter dated 21.10.99 intimated the accused company about the notification of SEBI CIS Regulations. Copy of the press release dated 20.10.99 was also sent

alongwith this letter The copy of the letter dated 21.10.99 alongwith the press release is Ex.CW1/5 and the envelope received back with the report 'left without address' is Ex.CW1/6. The statutory obligations in terms of the provisions of SEBI CIS Regulations and SEBI Act, 1992 were intimated to the general public vide public notice dated 10.12.99 which was published in major English and vernacular dailies. The copy of the public notice dated 10.12.99 is Ex. CW1/7 (objected to by accused no.6 on the ground of mode of proof). The statutory obligations cast upon the accused persons in terms of SEBI CIS Regulations and the provisions of SEBI Act, 1992 were intimated to the accused company vide letter dated 10.12.99 and a reminder was issued vide letter dated 29.12.99. The copy of the letter dated 10.12.99 is Ex.CW1/8 and envelope in respect thereof, receipt with the report is Ex.CW1/9 (objected to by accused no.6 on the ground of mode of proof). The copy of the letter dated 29.12.99 is Ex.CW1/10 and envelope in respect thereof, receipt with the report is Ex.CW1/11 (objected to by accused no.6 on the ground of mode of proof). Since, the accused company did not file for registration of scheme with SEBI and did not comply with the provisions of SEBI CIS Regulations, 1999, SEBI vide show cause notice dated 12.05.2000 advised the accused company to show cause as to why action be not initiated against them for non-compliance of the provisions of SEBI CIS Regulations, 1999 and the provisions of SEBI Act, 1992. A copy of letter dated 12.05.2000 is Ex.CW1/12 and envelope received back is Ex.CW1/13 (objected to by accused no.6 on the ground of mode of proof). No response was received from accused company. SEBI vide letter dated 31.07.2000 forwarded format of Winding up and Repayment Report (WRR) to accused company, which was required to be submitted by the accused company after Winding up of its Schemes and making repayment to its investors. Copy of letter dated 31.07.2000

alongwith the format of WRR is Ex. CW1/14 (5 pages) and the envelope received back is Ex.CW1/15 (objected to by accused no.6 on the ground of mode of proof). The accused company did not get its scheme registered with SEBI. The accused company has also not filed WRR with SEBI after winding up and repayment of all the investors and therefore, has violated the provisions of SEBI Act and SEBI CIS Regulations.

SEBI vide order dated 07.12.2000 directed the accused company to wind up its schemes and to repay its investors in terms of its offer documents within a period of one month from the date of order failing which further action as mentioned in the order were to follow. The copy of this order dated 07.12.2000 was forwarded to the accused company by SEBI vide its letter dated 18.12.2000. The copy of the letter dated 18.12.2000 alongwith order dated 07.12.2000 is Ex.CW1/16 (three pages) and the envelope received back undelivered is Ex.CW1/17 (objected to by accused no.6 on the ground of mode of proof).

The present complaint has been signed and filed by Ms. Jyoti Jindgar, the then AGM, SEBI, for and on behalf of SEBI. I have seen her writing and signing during the course of my duties with SEBI. The complaint bears her signature at point A and complaint is Ex.CW1/18. Ms. Jyoti Jindgar was authorized to file the complaint on behalf of SEBI vide authority letter dated 20.09.01 and the copy of the said letter of authority is Ex.CW1/19 (objected to by accused no.6 on the ground of mode of proof). Ms. Jyoti Jindgar has proceeded on deputation to Competition Commission of India and I have been authorized by means of delegation of power dated 03.05.10 to prosecute the present complaint further. The said delegation of power is Ex.CW1/20 (two pages) (objected to by accused no.6 on the ground of mode of proof). I have further been empowered to prosecute the

present complaint by means of letter of authority dated 09.01.13 issued by Sh. Narendra Rawat, DGM. The said letter of authority dated 09.01.13 is Ex.CW1/21 (objected to by accused no.6 on the ground of mode of proof).

The record received from ROC, Chandigarh vide letter dated 03.04.2013 which contained certified copies, extract of memorandum association, extract of article of association, annual returns as on 30.09.1997 and form 32 caused on 15.06.1998. The same is Ex.CW1/22. (objected to by accused no.6 on the ground of mode of proof)."

19. Thereafter, CE was closed. Statement under Section 313 of accused No.2, 6 and 7 was recorded wherein all the incriminating evidence which came on record was put to them, which they denied. Since accused No.2 is not before this Court, therefore, his statement is not relevant here.

20. In his statement recorded under Section 313 CrPC, accused No.6 had stated that he was nominated Director without his consent and knowledge and without any share holding on 02.10.1992. On coming to know about this fact, he refused to accept the post of Director of the said company and sent his resignation on 24.01.1993 which was accepted by the said company on 25.01.1993 and the acceptance of the resignation was sent to him vide memo dated 26.01.1993 with a copy to ROC. He had stated that he never participated in any activity of the said company nor did he sign any document of the same. He never derived any benefit from the said company nor did he

receive any money from anyone on behalf of the said company rather he contested many civil and criminal cases as an advocate on behalf of the depositors against the said company. He never received any information from the SEBI and from the company in regard to scheme in question. He had never been involved in functioning of accused No.1 and he has also no knowledge about the floating of the scheme by accused No.1 company. When he came to know that his name was floating in the brochure of the company then he objected to the same on which accused No.1 withdrew the said brochure and his name was got deleted from list of directors and same was accepted by company and copy dated 26.01.1993 was sent to him by accused No.1. He had also stated that he was never the person in charge and responsible for the day to day functioning or decision and policy making of the company. He never had any knowledge of the functioning of the company. He had also stated that the complainant had not verified the true and correct facts regarding the persons responsible for functioning of the accused No.1 company and date of his resignation from the company. The complainant had not verified that he was not responsible for floating of the scheme by the accused No.1. He was never the beneficiary of either the scheme or funds generated by the accused no.1 company.

21. In his statement recorded under Section 313 CrPC, accused No.7 had stated that he was appointed as Area Manager of the accused No.1 company on 13.09.1994. Thereafter, he deposited a sum of Rs.53,000/- on 20.02.1996 vide Demand Draft No.875797 issued by Allahabad Bank for sum of Rs.49,900/- and

DD No.898515 dated 23.02.1996 for Rs.3000/- with accused No.1 company as security. On 13.07.1997 the company got a form filled from him, details of which were not told to him. When he realised that he had been made a director without his consent and knowledge, he resigned on 08.11.1998 which was accepted by the company. His deposit amount and also his salary for the period for which he worked with the company remained unpaid for which he filed a civil case against accused No.1 company which was decreed in his favour on 02.03.2007 and pursuant to the same, he received his entire money. He had further stated that besides the above, he had no concern with the accused No.1 company whatsoever. He never participated in any activity of the company nor did he sign any document of the same. He never derived any benefit from the said company nor did he receive any money from anyone on behalf of the said company. He also never received any information from SEBI and from the company with regard to the scheme in question. He had further stated that he had never been involved in functioning of the accused No.1 and he had also no knowledge about the floating of the scheme by accused No.1 company. His name from list of directors was deleted and resignation was accepted by company on 08.11.1998. He had also stated that he was never the person in charge and responsible for the day to day functioning or decision and policy making of the company. He never had any knowledge of the functioning of the company. He was only the Area Manager during the September, 1994 at a salary of Rs.2000/- pm. He was appointed as director without his consent and knowledge and his document which he had submitted for his

appointment as Area Manager with the company have been misused by the company by showing him as a director in company. He had also stated that the complainant had not verified the true and correct facts regarding the persons responsible for functioning of the accused No.1 company and date of his resignation from the company. The complainant had not verified that he was not responsible for floating of the scheme by the accused No.1. He was never the beneficiary of either the scheme or funds generated by the accused no.1 company.

22. Accused No.6 and 7 led defence evidence.

23. Accused No.6 had examined Sh.Harish Pal Singh Negi as DW-1 in his defence and himself as DW-2.

24. DW-1 Sh.Harish Pal Singh Negi had stated that he was the director of accused no.1 company from its inception till 08.07.1993 and that accused No.6 Ranvir Saini had tendered his resignation on 24.01.1993 which was accepted by the company vide its board meeting held on 25.01.1993 wherein he alongwith Rohtash Saini, Dayanand Saini and Ramniwas Saini were present and in the said meeting, the resignation tendered by Ranvir Saini was unanimously decided to be accepted. He had deposed that the said decision was also sent to ROC, Jalandhar for necessary compliance. He had further deposed that during the tenure of Ranvir Saini as director of the company, he played no role whatsoever in the day to day functioning and management of the company. He had deposed that accused No.6 Ranvir Saini never appended his signatures anywhere on behalf of the company and

that even he (DW-1) had resigned from the company on 08.07.1993. He had seen the document bearing Reference No.NF/CO/93/427 dated 26.01.1993 and stated that it bears his signature at points-X and Y and proved the copy of the same as **Ex.DW1/A.**

25. Accused No.6 Ranbir Singh had examined himself under Section 315 CrPC as DW-2. During his deposition as DW-2, he had tendered and proved the following documents in his defence:-

(i) Certified copy of the order dated 07.05.2015 on the application under Section 319 Cr.P.C. in the case State Vs. Rohtash Saini as Ex. DW2/A.

(ii) Certified copy of the order dated 07.05.2015 on the application under Section 319 Cr.P.C. in the case State Vs. Rohtash Saini as Ex.DW2/B.

(iii) Certified copy of the order dated 07.05.2015 on the application under Section 319 Cr.P.C. in the case State Vs. Rohtash Saini as Ex.DW2/C.

(iv) Certified copy of the order dated 07.05.2015 on the application under Section 319 Cr.P.C. in the case State Vs. Rohtash Saini as Ex. DW2/D.

(v) Certified copy of the order dated 07.05.2015 on the application under Section 319 Cr.P.C. in the case State Vs. Rohtash Saini as Ex.DW2/E.

(vi) Certified copy of the order dated 07.05.2015 on the application under Section 319 Cr.P.C. in the case State Vs. Rohtash Saini as Ex.DW2/F.

(vii) Certified copy of the order dated 07.05.2015 on the application under Section 319 Cr.P.C. in the case State Vs. Rohtash Saini as Ex.DW2/G.

(viii) Certified copy of the order dated 11.09.2015 in Revision No. 129/2015 under the title Kanta Rani Vs. Rohtash Saini as Ex.DW2/H.

(ix) Certified copy of the order dated 11.09.2015 in Revision No. 228/2015 under the title Harish Chand Vs. Rohtash Saini as Ex.DW2/I.

(x) Certified copy of the order dated 09.04.2015 on the application under Section 319 Cr.P.C. in the case State Vs. Rohtash Saini as Ex.DW2/J.

(xi) Certified copy of the order dated 13.05.2015 on the application under Section 319 Cr.P.C. in the case State Vs. Rohtash Saini as Ex.DW2/K.

(xii) Certified copy of the order dated 09.11.2016 in Crl. Revision titled as Raja Ram vs. Rohtash Saini Etc. as Ex.DW2/L.

(xiii) Certified copy of the order dated 09.11.2016 in Crl. Revision titled as Rai Singh vs. Rohtash Saini as Ex.DW2/M.

(xiv) Certified copy of the order dated 09.11.2016 in Crl. Revision titled as Om Prakash vs. Rohtash Saini Etc. as Ex.DW2/N.

(xv) Certified copy of the order dated 09.11.2016 in Crl. Revision titled as Surat Singh vs. Rohtash Saini Etc. as Ex.DW2/O.

(xvi) Certified copy of the order dated 09.11.2016 in Crl. Revision titled as Umed Singh vs. Rohtash Saini Etc. as Ex.DW2/P.

(xvii) Certified copy of the Status Report dated 31.03.2012 filed by DSP Hansi before the Hon'ble High Court of Punjab and Haryana in Crl. Misc. No. M-22752 of 2011 as Ex.DW2/Q.

26. Accused No.7 Anand Varshney had examined himself under Section 315 CrPC as DW-3. During his deposition as DW-3, he had deposed that accused No. 1 company was incorporated in the year 1992 wherein he was neither the

promoter nor the director. He had further stated that sometime in the year 1996, he was employed with the accused no.1 at monthly pay of Rs.2,000/- per month. He had also paid Rs.52,900/- to the accused no.1 as they promised income on the said amount. Thereafter, they got certain documents signed from him, however, they refused to pay him the assured higher returns despite his demanding the profits out of the said investment. He had further stated that he did not have the DIN number which the company had asked for and that he was told that he had been appointed as Director without his consent and knowledge. He had further deposed that he tendered his resignation from the accused no.1 company on 8.11.1998 which was accepted by the company on 20.11.1998 and the intimation was sent to him through registered post and proved the certified copy as Ex.DW3/A (02 pages). DW-3 had further deposed that he had also initiated a recovery suit against the accused no.1 company at Aligarh Court in the year 2001 for recovery of his investment amount which was decreed in his favour after due service to the accused no. 1 company. He had proved the said Decree as Ex.DW3/B (running into 03 pages). He had further deposed that thereafter, the accused no.1 company had returned his money against proper receipt and proved the said receipt as Ex.DW3/C. He had further deposed that he had also filed RTI seeking details of his Form 32 with the company, however he was informed that the Form 32 regarding appointment/ resignation of directors have been destroyed as per rules and are not available in our record. The said RTI reply was marked as Mark-A1. DW-3 had proved his resignation letter dated 8.11.1998 as Ex.DW3/D (2 pages).

He had further deposed that he had not received any notice or letter from SEBI prior to initiation of present proceedings and that he had neither issued any receipt or signed any cheque on behalf of the company. He had further deposed that the accused company got signed certain papers from him under the garb of depositing the money and he was appointed as director under deceit.

Arguments on behalf of complainant

27. Sh. Ashish Aggarwal, ld. counsel for complainant/SEBI had argued that accused No.1 company had floated a Collective Investment Scheme (CIS) and there is a dispute to the fact that they did not get the scheme registered after coming into force of the CIS Regulations. He had further argued that accused persons had never disputed that they were not running the CIS Scheme and the documents relied upon by complainant's witness during the evidence clearly unfolds the case of the complainant and establishes the guilt of the accused persons.

28. Ld. counsel had further argued that the documents submitted by accused No.1 company clearly show that it was running a Collective Investment Scheme and accused No.2 was the Chairman-cum-Managing Director of accused No.1 company and accused No.6 & 7 were the directors of accused no.1 company. He further argued that accused No.1 submitted its audited balance sheet as per which the total amount mobilized under the Forestry Scheme was shown to Rs.2,01,62,641.44/-

29. Ld. counsel for the complainant/SEBI had argued that the

said fact is also proved from the ROC record which has also been exhibited during the testimony of CW-1.

30. Sh. Ashish Aggarwal, ld. counsel for the complainant had argued that accused No.1 company had failed to wind up its scheme by repaying its investors and filing the winding up and repayment report to SEBI which is in violation of the provision of SEBI Act and CIS Regulations.

31. Ld. counsel for the complainant had argued that accused No.6 had taken a defence that he resigned from the directorship of accused no.1 company on 08.07.1993 and had also exhibited certain orders passed by Courts at Haryana. Ld. counsel had further argued that the resignation put forth by accused No.6 is a fabricated document as no document of resignation was filed with ROC and therefore, he continued to be director of accused No.1 company.

32. With respect to the orders passed by the Courts at Haryana, it was argued by learned counsel for the complainant that SEBI was not a party to those proceedings and the offence alleged in those cases are different from the ones for which the present case was filed and therefore, those orders cannot be read in this case.

33. With respect to accused No.7, it was argued that a false defence has been created by filing a civil suit by accused No.7 against accused No.1 company and his alleged resignation is also false.

34. Ld. counsel for the complainant had argued that the complainant has successfully proved that accused no.6 and 7 were the directors of accused No.1 company at the relevant time and therefore, they be punished alongwith accused No.1 company as per law.

35. Ld. counsel for complainant had relied upon the following judgments in support of his contentions:

- (i) ***Ankur Forest and Project vs. Securities and Exchange Board of India, Crl.A. no.220/2010 dated 08.02.20211 Delhi High Court (Paras 11, 12, and 14)***
- (ii) ***S.M.S. Pharmaceuticals Ltd. vs. Neeta Bhalla, Manu/SC/0622/2005 (Para 16)***
- (iii) ***Gunmala Sales Pvt. Ltd. vs. Anu Mehta, Laws (SC) 2014 134 (Para 33)***
- (iv) ***A.R. Radha Krishna vs. Dasari Deepthi & Ors., Crl.A. Nos.403-405 of 2019 decided on 28.02.2019 (Para 9)***
- (v) ***H.R. Kapoor vs. Securities and Exchange Board of India, Laws (DLH) 2008 (2) 12 (Paras 6, 7 and 10)***

Arguments on behalf of Accused No.6

36. Sh. Bankey Bihari, ld. counsel for accused No.6 had argued that as per Section 26 of SEBI Act, no Court shall take cognizance of the offence under this Act except on the complaint filed by the Board, however in the present case, the complaint has been filed by one Ms. Jyoti Jindgar, the alleged AGM of the complainant on the basis of authority letter dated 20.09.2001 Ex.CW1/19 issued by Sh. D.R. Mehta, alleged Chairman of the Board. Ld. counsel for accused No.6 had further argued that Board is different from the Chairman and the Chairman alone cannot be said to be the Board. He had further argued that even otherwise authority letter Ex.CW1/19 has not been duly proved

in accordance with law. Further, there was no resolution of the Board to authorise the Chairman to act as Board in the present case and therefore, Ms. Jyoti Jindgar is not the competent person to file the complaint in the present case. Ld. counsel had relied upon *M/s Nibro Ltd. vs. National Insurance Co. Ltd. AIR 1991 Delhi 25*, *National Small Industries Corporation Ltd. vs. State (NCT of Delhi) & Ors.(2009) 1 SCC 407* and *Municipal Corporation of Delhi vs. Jagdish Lal & Ors. AIR 1970 SC 7* in support of his above submissions.

37. Ld. counsel for the accused No.6 had further argued that CW-1 has not been able to show any document for assigning any role to accused no.6 for being in charge and responsible for day to day affairs of accused no.1 company and for the conduct of its business. He had further argued that CW-1 did not cite any document bearing the signature of accused no.6 which could indicate the same. No correspondences has been shown by the complainant between SEBI and accused No.6. He had argued that CW-1 had admitted that accused no.6 does not hold any share in accused no.1 company and therefore, accused No.6 has no role to play. He had relied upon *SEBI vs. Gaurav Varshney & Anr. (2016) 14 SCC 430* in support of his submission.

38. While relying upon *Manish Kant Aggarwal vs. National Agricultural Cooperative Marketing Federation Of India Ltd. 2009 (1) CC Cases (HC) 155 (Del)* and *Saumil Dilip Mehta vs. State of Maharashtra & Ors. AIR 2022 Bombay 194*, Sh.Bankey Bihari, ld. counsel for accused No.6 had argued that as a matter

of fact, accused No.6 was nominated as Director of accused No.1 company by accused No.2 on 02.10.1992 without his consent, knowledge and without any share holding and upon coming to know about the same, he resigned from the said directorship on 24.01.1993 which was duly accepted in the meeting held on 25.01.1993 and an intimation was sent to accused no.6 vide memo dated 26.01.1993 with a copy of same to the ROC. Ld. counsel for the accused No.6 had never participated in any activity of accused no.1 company, had never put any signature on any document of accused no.1 company and he has not received any benefit from the said company in any form whatsoever. Infact he contested many civil and criminal cases against accused no.1 company as an advocate on behalf of the depositors.

39. Ld. counsel for accused No.6 had further argued that accused No.6 had exhibited several orders passed by Sub-Divisional Magistrate, District Rewari wherein applications filed by concerned complainants under Section 319 CrPC to treat accused No.6 as accused alleging him to be director of accused no.1 company, were dismissed relying upon his resignation letter and therefore, the principle of issue estoppel is applicable in the facts in hand. Ld. counsel had relied upon ***Lalta & Ors. vs. State of U.P. AIR 1970 SC 1381*** and ***Manipur Administration vs. Thokchom, Bira Singh 1965 (AIR) SC 87*** in support of his above submission.

40. Ld. counsel for accused No.6 had submitted that he has filed written submissions alongwith the judgments mentioned at

Sl. No.1 to 24 and thereafter he filed another written submissions with further judgments mentioned at Sl. no.26 to 33. Out of the same, he is only relying upon the ones which have been cited alongwith the arguments addressed above and rest be ignored.

Arguments on behalf of accused No.7

41. Sh. Atul Sahi, ld. counsel for accused No.7 has argued that accused No.7's consent was not taken while appointing him as a Director and the moment he came to know about the fact that he was made Director in the company, he tendered his resignation which was accepted by the then Director on behalf of the company vide document Ex.DW3/A. Ld. counsel had further argued that accused No.7 had never signed any document on behalf of the company, had never participated in any of its affairs and had never conducted its business. Ld. counsel had further argued that except for the bald allegations in para 18 of the complaint, there is no document in order to show that accused No.7 was person in charge of and responsible for the business affairs of the accused No.1 company. He had also relied upon ***SEBI vs. Gaurav Varshney & Anr. (2016) 14 SCC 430*** in this regard. It was further argued that accused No.7 had filed a suit against accused No.1 company in the year 2001 wherein the exparte judgment dated 07.03.2007 was passed against the company. He had further argued that the complainant has failed to prove any allegations against accused No.7 or the fact that any violation of the provisions of SEBI Act was committed by accused No.7 and therefore, he be acquitted.

Analysis, Reasoning & Findings

42. I have heard ld. counsel for SEBI and ld. counsels for accused No.6 and 7 and have also carefully perused the record.

43. At this juncture, it is relevant to note that in the memo of parties as well as in the documents filed by accused No.1 company, the name of accused no.6 is mentioned as Ranbir Singh, however, during trial, at various places, his name is mentioned as Ranvir Saini. These names have been used interchangeably during the trial. It is noted that there is no dispute with respect to identity of this person.

44. Further, it is relevant to note that in the memo of parties, the name of accused no.7 is mentioned as Anant Varshney whereas in the documents filed by accused No.1 company, his name is Anand Varshney. Both these names have been used interchangeably during the trial. It is noted that there is no dispute with respect to identity of this person.

45. Before coming to the merits of the case, it is necessary to deal with the arguments of learned counsel for the accused persons who had argued that Ms. Jyoti Jindgar was not competent to file the present complaint and even the authority letter which was produced on her behalf was not produced in original. The contention of learned counsel for the accused persons was that Board herein is different from the Chairman and therefore, Chairman could not authorise anyone to file the complaint. In this regard, it is noted that SEBI is a statutory body created by a Statute. The provisions of SEBI Act, governs this

body. There are provisions with respect to delegation of authorities by the Board.

46. Section 4 of SEBI Act is relevant wherein the composition of the Board has been defined and in sub-section 3 of Section 4, the Chairman has been given the powers of general superintendence and directions of the affairs of the Board and to do all such acts which may be done by a Board. In addition to Section 4, Section 19 of the SEBI Act provides delegations of powers to any member or officer of the Board or any other person as it may deem fit. The said Sections are reproduced herein under for the sake of reference:-

“Management of the Board.

4. (1) xxx xxx xxx

(2) xxx xxx xxx

(3) xxx xxx xxx

(4) The Chairman and members referred to in clauses (a) and (d) of sub-section (1) shall be appointed by the Central Government and the members referred to in clauses (b) and (c) of that sub-section shall be nominated by the Central Government and the [Reserve Bank] respectively. xxx xxx xxx”

“Delegation.

19. The Board may, by general or special order in writing delegate to any member, officer of the Board or any other person subject to such conditions, if any, as may be specified in the order, such of its powers and functions under this Act (except the powers under section 29) as it may deem necessary.”

47. A conjoint reading of these sections clearly demonstrates that the Chairman was well within his powers to delegate the

authority to any other officer of the Board to file the complaint, hence the arguments that Board is different from Chairman is of no consequence and is hence, rejected.

48. The complaint has been filed by Ms. Jyoti Jindgar, who was the then Assistant General Manager of SEBI. The pleadings to that effect were made in the criminal complaint filed by her which has not been disputed. The reiteration in this regard has been made in deposition of CW-1.

49. CW-1 Ms. Versha Agarwal has deposed that:

“The present complaint has been signed and filed by Ms. Jyoti Jindgar, the then AGM, SEBI, for and on behalf of SEBI. I have seen her writing and signing during the course of my duties with SEBI. The complaint bears her signature at point A and complaint is Ex.CW1/18. Ms. Jyoti Jindgar was authorized to file the complaint on behalf of SEBI vide authority letter dated 20.09.01 and the copy of the said letter of authority is Ex.CW1/19.”

50. It was never suggested to CW-1 during her cross examination that Ms. Jyoti Jindgar was not the Assistant General Manager of SEBI or that she was not authorised to file the complaint on behalf of SBI. It is a settled law that in case the correctness of a statement is to be disputed, same must be put to the witness so as to afford him opportunity to explain his statement. Reliance in support thereof is placed on the judgment of the **House of Lords in Browne Vs. Dunne 2 (1893) 6 R 67 (HL)** :

“I cannot help saying that it seems to me to be absolutely essential to the proper conduct of a cause, where it is intended to suggest that a

witness is not speaking the truth on a particular point, to direct his attention to the fact by some questions put in cross examination showing that the imputation is intended to be made, and not to take his evidence and pass it by as a matter altogether unchanged, and then, when it is impossible for him to explain, as perhaps he might have been able to do if such questions had been put to him, the circumstances which, it is suggested, indicate that the story tells he tells ought not to be believed, to argue that he is a witness unworthy of credit. My Lords, I have always understood that if you intend to impeach a witness, you are bound, whilst he is in the box to give an opportunity of making any explanation which is open to him; and, as it seems to me, that is not only a rule of professional practice in the conduct of a case, but it is essential to fair play and fair dealing with witnesses.”

51. The principle laid down in **Browne vs. Dunne (Supra)** was subsequently approved by Hon'ble Supreme Court of India in **Rajendar Prasad Vs. Darshana Devi (2001) 7 SCC Page 69**, wherein it was held :

“There is an age old rule that if you dispute the correctness of the statement of a witness you must give him an opportunity to explain his statement by drawing his attention to that part of it which is objective to as untrue, otherwise you cannot impeach his credit.....”

52. Since no suggestion was put to CW-1 in respect of her above testimony, therefore, the correctness of this part of her testimony stands proved.

53. Ld. counsel for accused No.6 had relied upon **M/s Nibro**

Ltd. (Supra), *National Small Industries Corporation Ltd.* (Supra) and *Municipal Corporation of Delhi vs. Jagdish Lal & Ors.* (Supra) in support of his averments that in the absence of a Board Resolution, the complaint filed by Ms. Jyoti Jindgar, Assistant General Manager is bad. As far as the aforesaid judgments are concerned, same are dealt with hereinunder one by one.

54. So far as judgment *M/s. Nibro Ltd.* (Supra) is concerned, the judgment was passed in regard to a suit filed by the company and was governed by CPC. It is pertinent to mention here that the case in hand is a criminal complaint under Section 200 CrPC. In that judgment, the High Court of Delhi (Original Side) Rules applicable to the civil cases were discussed which are not applicable to the case in hand and therefore, the judgment in *M/s. Nibro Ltd.* (Supra) is not applicable.

55. In the judgment *National Small Industries Corporation Ltd.* (Supra), the complaint was filed by a company under Section 138 r/w 142 NI Act. The company in that case was a company registered under Companies Act, 1956 unlike a statutory body in the present case and therefore, this judgment is not applicable to the case in hand.

56. The judgment in *Municipal Corporation of India vs. Jagdish Lal & Ors.* (Supra) is pertaining to MCD and particulars sections of Delhi Municipal Corporation Act and Protection of Food Adulteration act have been discussed therein and therefore this judgment is also not applicable to the case in hand.

57. At this juncture, it is relevant to mention that the higher Courts have time and again cautioned that even a minute difference in the facts of the case can all together alter the decision of that particular case and therefore, the precedents should be applied very carefully and as per the facts and circumstances. Reliance in this regard is placed upon ***Sumitibai & Ors. vs. Paras Finance Co. Mankanwar W/o Parasmal Chordia (D) & Ors. Appeal (Civil) No.117of 2021 decided on 04.10.2007.***

58. In the backdrop of the analysis and the discussion made above, it is clear that the complaint was filed by the Assistant General Manager. It was never challenged that Ms. Jyoti Jindgar was not the Assistant General Manager at the time of filing the complaint. Hence, she was authorised to file the complaint.

59. Ms. Jyoti Jindgar, Assistant General Manager was substituted by CW-1 Ms. Versha Agarwal whose authority letter and general order has already been proved on record. Therefore, the complaint was filed by a competent person and CW-1 Ms. Versha Agarwal, who had deposed on behalf of SEBI was equally competent to depose.

60. Having said so, before proceeding with the appreciation of evidence and documents on record, it would be relevant to note the relevant provisions of the SEBI Act.

61. Section 11B of SEBI Act provides the powers of SEBI to

issue directions in the interest of investors and Section 12(1B) of SEBI Act provides for registration of the CIS by the company. Section 11B and 12(1B) of SEBI Act are reproduced hereinunder:

“11B. Power to issue directions [and levy penalty]

[(1)] Save as otherwise provided in section 11, if after making or causing to be made an enquiry, the Board is satisfied that it is necessary,—

(i) in the interest of investors, or orderly development of securities market; or

(ii) to prevent the affairs of any intermediary or other persons referred to in section 12 being conducted in a manner detrimental to the interest of investors or securities market; or

(iii) to secure the proper management of any such intermediary or person,

it may issue such directions,—

(a) to any person or class of persons referred to in section 12, or associated with the securities market; or

(b) to any company in respect of matters specified in section 11A,

as may be appropriate in the interests of investors in securities and the securities market.

[Explanation.—For the removal of doubts, it is hereby declared that the power to issue directions under this section shall include and always be deemed to have been included the power to direct any person, who made profit or averted loss by indulging in any transaction or activity in contravention of the provisions of this Act or regulations made thereunder, to disgorge an amount equivalent to the wrongful gain made or loss averted by such contravention.]

[(2) Without prejudice to the provisions contained in sub-section(1), sub-section (4A) of section 11 and section 15-I, the Board may, by an order, for reasons to be recorded in writing, levy penalty under sections 15A, 15B, 15C, 15D, 15E, 15EA, 15EB, 15F, 15G, 15H, 15HA and 15HB after

holding an inquiry in the prescribed manner.]

12. (1B) *No person shall 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:*

PROVIDED that any person sponsoring or causing to be sponsored, carrying or causing to be carried on any venture capital funds or collective investment schemes operating in the securities market immediately before the commencement of the Securities Laws (Amendment) Act, 1995, for which no certificate of registration was required prior to such commencement, may continue to operate till such time regulations are made under clause (d) of sub-section (2) of section 30.]

[Explanation: For the removal of doubts, it is hereby declared that, for purposes of this section, a collective investment scheme or mutual fund shall not include any unit linked insurance policy or scrips or any such instrument or unit, by whatever name called, which provides a component of investment besides the component of insurance issued by an insurer.]”

62. The violations are punishable under Section 24 r/w Section 27 of the SEBI Act against company and its directors.

63. Section 24 and Section 27 of SEBI Act provides as under:

“Offences.

24. (1) *Without prejudice to any award of penalty by the adjudicating officer under this Act, if any person contravenes or attempts to contravene or abets the contravention of the provisions of this Act or of any rules or regulations made thereunder, he shall be punishable with imprisonment for a term which may*

extend to [ten years, or with fine, which may extend to twenty-five crore rupees or with both].

(2) If any person fails to pay the penalty imposed by the adjudicating officer or fails to comply with any of his directions or orders, he shall be punishable with imprisonment for a term which shall not be less than one month but which may extend to [ten years, or with fine, which may extend to twenty-five crore rupees or with both].

xxx xxx

Offences by companies.

27. (1) Where an offence under this Act has been committed by a company, 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 well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) xxx xxx

Explanation : For the purposes of this section,—

(a) “company”, means any body corporate and includes a firm or other association of individuals; and

(b) “director”, in relation to a firm, means a partner in the firm.”

64. Certain regulations of CIS Regulations which are relevant for the present case are also provided hereinunder:

“Application by existing Collective Investment Schemes.

5. (1) Any person who immediately prior to the commencement of these regulations was operating a [collective investment scheme], shall subject to the provisions of Chapter IX of these regulations make an application to the Board for the grant of a certificate within a period of two months from such date.”

65. Regulation 68(1) and (2) of CIS Regulations provides as under:

“Existing schemes to obtain provisional registration

68. (1) Any person who has been operating a collective investment scheme at the time of commencement of these regulations shall be deemed to be an existing collective investment scheme and shall also comply with the provisions of this Chapter.

Explanation : The expression ‘operating a collective investment scheme’ shall include carrying out the obligations undertaken in the various documents entered into with the investors who have subscribed to the [collective investment scheme]

(2) An existing collective investment scheme shall make an application to the Board in the manner specified in regulation 5.”

66. The existing CIS are granted registration in accordance with the provisions of the Act and the Regulations under Regulations 72. The existing CIS which fails to make any application for the registration to the Board, Regulation 73 and 74 provides that the company shall wind up such existing CIS and make repayment to the investors. Regulation 73 and 74 are reproduced hereinunder for the sake of convenience:-

“Manner of repayment and winding up

73. (1) *An existing collective investment scheme which:*

(a) has failed to make an application for registration to the Board;

or

(b) has not been granted provisional registration by the Board; or

(c) having obtained provisional registration fails to comply with the provisions of regulation 71; shall wind up the existing [collective investment scheme].

(2) The existing Collective Investment Scheme to be wound up under sub-regulation (1) shall send an information memorandum to the investors who have subscribed to the [collective investment scheme]s, within two months from the date of receipt of intimation from the Board, detailing the state of affairs of the [collective investment scheme], the amount repayable to each investor and the manner in which such amount is determined.

(3) The information memorandum referred to in sub-regulation (2) shall be dated and signed by all the directors of the [collective investment scheme].

(4) The Board may specify such other disclosures to be made in the information memorandum, as it deems fit.

(5) The information memorandum shall be sent to the investors within one week from the date of the information memorandum.

(6) The information memorandum shall explicitly state that investors desirous of continuing with the [collective investment scheme] shall have to give a positive consent within one month from the date of the information memorandum to continue with the [collective investment scheme].

(7) The investors who give positive consent under sub-regulation (6), shall continue with the

[collective investment scheme] at their risk and responsibility :

Provided that if the positive consent to continue with the [collective investment scheme], is received from only twenty-five per cent or less of the total number of existing investors, the

[collective investment scheme] shall be wound up.

(8) The payment to the investors, shall be made within three months of the date of the information memorandum.

(9) On completion of the winding up, the existing collective investment scheme shall file with the Board such reports, as may be specified by the Board.

Existing [collective investment scheme] not desirous of obtaining registration to repay

74. An existing collective investment scheme which is not desirous of obtaining provisional registration from the Board shall formulate a [collective investment scheme] of repayment and make such repayment to the existing investors in the manner specified in regulation 73.

67. Certain undisputed facts are as under:-

- (i) Accused No.1 company was running a CIS.
- (ii) Accused No.1 company had due information of press releases and public noticed issued by SEBI with respect to CIS regulations and in response thereof, accused No.1 company submitted the documents on various occasions which have been exhibited by CW-1 Ms.Versha Agarwal in the present case.
- (iii) No winding up report or the details with respect to the repayment to the investors has ever been submitted by accused No.1 company to SEBI.

68. Accused No.1 company i.e. Neelgiri Forest Ltd. was

running CIS and that is the reason that accused No.1 company in response to the public advertisement dated 12.12.1997, submitted information about its schemes with SEBI vide its letter dated 14.01.1998 alongwith its brochure, list of board of directors and certified copy of Memorandum and Articles of Association of the company. The said letter alongwith the annexures have been exhibited as Ex.CW1/1. Though it has been objected by Id. counsel for accused No.6 on the ground of mode of proof, however, since these are the documents of accused No.1 company itself and were produced by accused no.1 company, there was no occasion for accused No.6, who was the director of accused No.1, to object to these documents being exhibited. No suggestion was given to CW-1 in respect of non-genuineness of the documents submitted by accused No.1 company with SEBI. The said objection is without any basis and is frivolous and therefore, these documents are duly admissible in evidence.

69. Perusal of the documents Ex.CW1/1 includes the original brochure of the CIS floated by accused No.1 company. In the said brochure, accused No.6 and 7 namely Ranbir Singh and Anand Varshney respectively are shown to be the Directors of accused No.1 company. In the very same brochure, the location and addresses of accused No.1 are mentioned wherein the address of Hissar is stated to be the Zonal Office of accused No.1 company and the address of Aligarh, U.P. is shown to be one of the Regional Office.

70. At this stage, it is pertinent to mention here that the

residential address of accused No.6 Ranbir Singh was of Hissar and that of accused No.7 was of Aligarh. Alongwith the said brochure, the list of Board of Directors is annexed (wherein date of 14.01.1998 has been written by hand instead of 22.05.1997) and this list of Board of Directors includes the name of accused No.6 Ranbir Singh and that of accused No.7 Anand Varshney having the said addresses.

71. As per the deposition of CW-1, during the further correspondence accused No.1 company vide its letter dated 29.04.1998 submitted the certified copy of MOA & AOA, name & address of all its directors and a compliance certificate from the Managing Director who was accused No.2 and the said letter alongwith its annexures was exhibited as Ex.CW1/2. Again the objection was taken, however, the objection is overruled for the reasons mentioned above. Perusal of these documents Ex.CW1/2 supplied vide letter dated 29.04.1998 would show that again accused No.6 and 7 herein were stated to be the Directors and their occupation was stated to be business. The said letter of Board of Directors was signed by accused No.2 Rohtas Saini who is Chairman-cum-Managing Director of accused no.1 company. Alongwith the said list, another letter addressed to SEBI by accused No.2 on behalf of accused No.1 was sent, the contents of which are reproduced hereinunder:-

“To

*Securities & Exchange Board of India
Block No.1, Rajendra Bhawan,
Rajendra Palace,
New Delhi-110008.*

We confirm having complied with all the directions issued by SEBI with regard to the regulation of collective investment schemes.

We further confirm that:

a. We have not floated any new collective investment scheme subsequent to the public notice issued by SEBI on 18th Dec, 1997.

b. We are not mobilising any further funds under our existing schemes and shall do so only after obtaining a rating of our existing schemes.

c. We shall ensure compliance of any further directions on collective investment schemes that may be issued by SEBI from time to time.

*For NEELGIRI FORESTS LIMITED
Chairman-cum-Managing Director”*

72. A careful reading of the contents of this letter would show that there is an admission that CIS was being run and accused No.1 company had not floated any new CIS.

73. The next communication vide letter dated 09.06.1998 accompanied by certified copy of audited balance sheet as on 31.03.1997 and as per the said balance sheet, the investors' fund under the forestry scheme was Rs.2,01,62,641.44. This document was exhibited as Ex.CW1/3. This information again fortified this fact that accused no.1 company had floated CIS and had collected money to the tune of more than Rs.2 crores from the innocent people.

74. The next correspondence was vide letter dated 24.06.1998 alongwith which list of assets created by the company out of the funds mobilized till 31.03.1997, was annexed which shows that

accused No.1 company had used the money received from the investors for purchasing the fixed assets as mentioned in the said list. The said documents alongwith letter were exhibited as Ex.CW1/4.

75. During deposition of CW-1 Ms. Versha Agarwal, the record received from Registrar of Companies, Chandigarh vide letter dated 03.04.2013 containing the certified copies, extract of Memorandum of Association, extract of Article of Association, annual returns as on 30.09.1997 and Form-32 filed on 15.06.1998, was exhibited as Ex.CW1/22. The same was also objected to by ld. counsel for accused No.6 on mode of proof. However, since the certified copy of record of ROC was filed, same is duly admissible in evidence and can be read accordingly. The objection raised is completely without any basis.

76. In the annual return filed as on 30.09.1997, the name of accused no.6 appeared as a Director and date of his appointment was mentioned as 02.10.1992 and date of ceasing (resigning or retiring) was NIL, meaning thereby as on 30.09.1997 he was still the Director of accused no.1 company. In the same annual return, the name of accused No.7 Anand Varshney is also given in list of Directors and date of his appointment is mentioned as 24.04.1996 whereas the date of ceasing is NIL.

77. It is pertinent to mention here at this stage that the brochure of forestry scheme which is placed in original and is Ex.CW1/2 clearly states that this issue was effective from 01.07.1996. Therefore, on the date of floating the scheme on

01.07.1996, accused No.6 and accused No.7 both were also the Directors of accused No.1 company.

78. The presence of the name of the accused no.6 and 7 in the brochure of CIS floated to the public itself shows the importance of the role of these accused persons in accused No.1 company. The general public while sitting at their home after reading the said brochure or prospectus would only make a single opinion that the directors enlisted therein were responsible and Incharge of CIS and would have parted with their hard earned money hoping for better future and monetary gains. Merely saying that these accused No.6 and 7 have not signed any paper on behalf of accused No.1 or that complainant had failed to show that these accused persons have received any benefits from the said investment scheme from the public, is completely not tenable. The complainant could not have been expected to get anything else from the company specially when nobody chose to appear on behalf of accused No.1 company since beginning.

79. Accused No.6 has taken a defence that he had resigned on 24.01.1993 itself which was accepted on 26.01.1993. He has exhibited the said document as Ex.DW1/A in this regard and same is reproduced hereinunder for the sake of convenience:

“To

*Shri Ranvir Singh Saini,
Advocate, Chamber No.105,
District Courts,
Hisar.*

Subject: Acceptance of Resignation.

Dear Sir,

Your resignation dated 24.01.1993 was considered in the meeting of the board of directors held on 25.1.1993. Keeping in view of the reasons given in the registration letter, the board of directors has accepted registration letter, the board of directors has accepted your resignation. This is for your kind information.

Dated 26.1.1993

*Director,
Neelgiri Forests Ltd.
SCO-2, Iind Floor, Sector-11,
Panchkula*

Copy forwarded to Registrar of Companies, Jalandhar for information and necessary action please.

Dated 26.1.1993

*Director,
Neelgiri Forests Ltd.”*

80. The careful perusal of this document Ex.DW1/A would show that it is an acceptance of resignation of accused No.6 Ranbir Singh addressed to him by one of the Directors of accused No.1 company. It is pertinent to mention here that when the record of ROC was summoned by complainant, no Form-32 as submitted by the company in respect of resignation of accused No.6, was received. Accused no.6 also did not make any efforts to summon the record of ROC with respect to Form-32/or that of accused No.1 company to prove that any such Form-32 was submitted by accused No.1 company for accused No.6. Id. counsel for accused No.6 infact argued that it was not the

responsibility of accused no.6 to file Form-32 with the ROC and the duty is of the concerned company to file the same once the director resigns. Ld. counsel for accused No.6 has relied upon certain judgments in this regard i.e. ***Manish Kant Aggarwal*** (Supra) and ***Saumil Dilip Mehta*** (Supra). The ratio of these judgments are not at all disputed. However, the emphasis is not on the fact that who was responsible to file Form-32, rather it is on the fact that as to how accused No.6 resigned. During the course of arguments, he had stated that he was made a Director without his knowledge and as soon as he came to know about his directorship in accused No.1 company, he resigned immediately thereafter on 24.01.1993. There is no defence evidence in respect of the fact that accused No.6 was made a director without his knowledge and as to how and when he gained knowledge of becoming a director particularly when he was not a signatory to any of the document of the accused No.1 company; was not a beneficiary to any of the amounts received from the public or/and was not involved in day to day functioning of the affairs of accused no.1 company. This fact was only within the knowledge of accused No.6 and the burden shifted upon him to prove the same in terms of provisions of Section 106 Indian Evidence Act. But said burden was not discharged by accused No.6. No letter of resignation dated 24.01.1993 as referred in Ex.DW1/A has been filed on record. Further, it is also not proved by accused No.6 that any meeting of Board of Directors was held on 25.01.1993 as referred in Ex.DW1/A.

81. Section 36 of Companies Act, 1956 provides the effect of Memorandum and Articles of Association. Same is reproduced

hereinunder:

“36. EFFECT OF MEMORANDUM AND ARTICLES

(1) Subject to the provisions of this Act, the memorandum and articles shall, when registered, bind the company and the members thereof to the same extent as if they respectively had been signed by the company and by each member, and contained covenants on its and his part to observe all the provisions of the memorandum and of the articles.

(2) All money payable by any member to the company under the memorandum or articles shall be a debt due from him to the company.”

82. Therefore, the clauses of resignation contained in Memorandum of Association and Article of Association were to be complied with by accused No.6 or accused No.1 company.

83. The original Memorandum and Articles of Association have been placed by accused No.1 company itself which are part of Ex.CW1/1. Clause 132 of Memorandum and Articles of Association is with respect to resignation of director. The said clause is reproduced hereinunder:-

“132. (1) Subject to the provisions of Section 283(2) of the Act, the office of a Director shall become vacant in accordance with Section 283(1) of the Act.

(2) Subject to the provisions of the Act, a Director may resign his office at any time by giving notice in writing addressed to the company or to the Board of Directors but any such resignation shall be effective when the same is accepted at a meeting of the Board of Directors.”

84. Since the manner in which the resignation was to be tendered and was to be accepted by the Board of Directors is

mentioned in Clause 132(2) of the Memorandum and Articles of Association of accused No.1 company, therefore, the said clause was to be strictly complied with in letter and spirit. A careful reading of the said clause shows that for resignation, a notice was to be given to the company or to the Board of Directors. The said resignation shall be effective only when it is accepted at the meeting of Board of Directors. Neither the resignation tendered to the company or to the Board of Directors has been placed on record leave aside proving it, nor the minutes of meeting wherein the said alleged resignation was accepted have been placed on record. Without these documents, merely exhibiting of this letter Ex.DW1/A by DW-1 Sh. Harish Pal Singh Negi, the director who allegedly signed the letter or his deposition to this effect is of no consequence. The resignation of DW-1 as on 23.01.1993 does not stand proved. Even otherwise, this document is contrary to the own document of accused No.1 company which were submitted by accused No.1 to SEBI in response to the press release with respect to CIS wherein even in the year 1996/1997, accused No.6 was shown to be the director.

85. Apart from this document Ex.DW1/A, accused No.6 has exhibited certain certified copies of the orders on the application under Section 319 CrPC in different cases before different Courts. Accused No.6 herein was sought to be summoned as an additional accused on the ground of being a director in accused No.1 company by moving applications under Section 319 CrPC in those cases and the said applications were dismissed. These orders have been exhibited as Ex.DW2/A to Ex.DW2/K. Ld.

counsel for accused No.6 has contended that doctrine of issue estoppel is invoked and therefore, the entire trial against accused No.6 is bad.

86. In this regard, it is relevant to reproduce an extract from the judgment **Manipur Administration** (Supra) relied upon by Id. counsel for accused No.6 wherein the doctrine of issue estoppel has been explained, hereinunder:

“Speaking of this type of estoppel Dixon, J. said in The King v. Wilkes(1):

"Whilst there is not a great deal of authority upon the subject, it appears to me that there is nothing wrong in the view that there is an issue estoppel, if it appears by record of itself or as explained by proper evidence, that the same point was determined in favour of a prisoner in a previous criminal trial which is brought in issue on a second criminal trial of the same prisoner. That seems to be implied in the language used by Wright, J. in R. v. Ollis which in effect I have adopted in the foregoing statement..... There must be a prior proceeding determined against the Crown necessarily involving an issue which again arises in a subsequent proceeding by the Crown against the same prisoner. The allegation of the Crown in the subsequent proceeding must itself be inconsistent with the acquittal of the prisoner in the previous proceeding. But if such a condition of affairs arises I see no reason why the ordinary rules of issue-estoppel should not apply. Such rules are not to be confused with those of res judicata, which in criminal proceedings are expressed in the pleas of autre fois acquit and autre fois convict. They are pleas which are concerned with the judicial determination of an alleged criminal liability and in the case of conviction with the substitution of a new liability. Issue-estoppel is concerned with the judicial

establishment of a proposition of law or fact between parties. It depends upon well-known doctrines which control the relitigation of issues which are settled by prior litigation."

87. Applying the above stated legal principle to the case in hand, no issue as to whether accused No.6 was a director in accused No.1 company or not, was framed in those cases and no finding has been arrived at by the competent Court after appreciation of evidence. These orders came to be passed in a particular set of facts merely on moving application under Section 319 CrPC or in the revision petition wherein no evidence was led or appreciated before their disposal. Even otherwise, complainant was not the party to those proceedings. Hence, the doctrine of issue estoppel is not applicable. These documents are not at all relevant for the said case and does not help accused No.6 in any manner.

88. Similar is the reasoning with respect to the rest of the orders passed in the revision petitions in different cases which have been exhibited as Ex.DW2/L to Ex.DW2/P. Certified copy of the status report by DSP, Hansi and submitted before Hon'ble High Court of Punjab & Haryana has been exhibited as Ex.DW2/Q wherein the finding with respect to accused No.6 not being a Director of accused No.1 company has been given. Any finding/inquiry of DSP regarding the said fact is not relevant or significant for the purpose of present case.

89. It was only accused No.6 who was required to lead the evidence in the manner discussed in the preceding paragraphs in

order to prove that he had actually resigned from accused No.1 company on 24.01.1993 and the same was accepted on 26.01.1993, however, accused No.6 failed to lead the evidence of such nature.

90. At this juncture, it is also relevant to refer to the statement of accused no.6 recorded under Section 313 CrPC. Question No.19 of the said statement of accused and the response to it is very relevant and therefore the same are reproduced hereunder:-

“Q19. It is further in evidence against you that after its incorporation on 02.09.1992 accused No.1 launched sponsored and carried on collective investment scheme without certificate of registration from SEBI and accused No.1 continued to carry on CIS without certificate of registration from SEBI even after 15.10.1999 and thereby violated Section 12(1B) of SEBI Act and SEBI CIS Regulations. What do you have to say?”

Ans. I have never been involved in functioning of the accused No.1 and I had also no knowledge about the floating of the scheme by the accused No.1 company. When I came to know that my name was floating in the brochure of the company then I objected to the same on which accused No.1 withdrew the said brochure and my name was got deleted from list of directors and same was accepted the by company and copy dated 26.01.1993 was sent to me by accused No.1.”

91. Response given to the question above as stated is very interesting. As per the version of accused No.6, he had resigned in January, 1993 itself whereas brochure was floated w.e.f. 01.07.1996. In the response to Question No.19 though he has

stated that he came to know about his name in the brochure of the company, however, he did not state as to how did he come to know about the same when he had severed his relations with accused No.1 company in January, 1993 itself. In the same response, he also stated that accused No.1 withdrew the said brochure on taking objection by accused No.6 and name of accused No.6 was deleted from the list of directors which was accepted by the company. In this regard, it is stated that neither any objection which was allegedly taken by accused No.6 has been placed on record nor any such brochure (amended brochure) which does not mention the name of accused No.6 in the list of directors has been placed by accused No.6 on record. No complaint was moved by accused No.6 before any competent authority against accused No.1 company or the then directors for falsely putting his name in the brochure floating the CIS in the year 1996 specifically when he had allegedly retired in January, 1993 itself. This response given in statement of accused is completely an after thought and is baseless and whimsical.

92. Accused no.7 has examined himself as DW-3 and he has stated that in the year 1992 when the accused No.1 company was incorporated, he was neither the promoter nor the director. In the year 1996, he was employed with accused No.1 company on monthly pay of Rs.2000/- pm and he also paid Rs.52,900/- to accused No.1 company as they promised income on the said amount and got certain documents signed from him. He had also stated that he was told that he was appointed as Director without his consent and therefore, he tendered his resignation on

08.11.1998 which was accepted by the company on 20.11.1998, an intimation of which was sent to him by registered post vide Ex.DW3/A. Document Ex.DW3/A is reproduced hereinunder:-

*“To
Shri Anand Varshney,
S/o Shri Durga Prasad,
9/34, Kanwariwanj, Aligarh.*

Sir,

I informed you that I have received your resignation letter dated 8.11.98 that is allowed by the Chairman/M.D. Your deposit amount cheque Rs.52,900/- will be send to you till 31.12.99 with 14% interest, and further informed you that your salary of your post (Director) will not be given.

*For Neelgiri Forests Ltd.
Chairman/M.D.*

*Copy of the following:-
1. Shri Anand Varshney
2. Branch Manager, Aligarh.”*

93. The record shows that this letter has been addressed to accused No.7 on 20.11.1998 by Chairman Rohtas Saini on behalf of accused No.1 company. The letter by which the resignation was tendered in terms of Clause 132(2) of Memorandum and Articles of Association of accused no,1 company has not been proved in accordance with law. It is not stated as to how accused No.7 came to know that he was appointed as a Director of the company. It is very strange to know that person who is an employee in a company getting Rs.2000/- pm as salary would give Rs.52,900/- to the company for receiving a promised income. The deposition in this regard is bereft of any specific

date, month or year. It is not specified as to when and who told accused No.7 that he was appointed as a Director and after how much time he tendered his resignation. It is worthwhile to note here that the document Ex.DW3/A has been signed by Chairman Rohtas Saini on behalf of accused No.1 company on 20.11.1998, however, in the record furnished by ROC, Chandigarh Ex.CW1/22, a certified copy of Form-32 of accused No.2 Rohtas Saini is found which shows that he had resigned from accused No.1 company on 15.06.1998. In case, this Form-32 of accused No.2 Rohtas Saini is considered to be genuine, Rohtas Saini ceased to be the Managing Director-cum-Chairman of accused No.1 company on 15.06.1998 itself, then how he could accept the resignation of accused No.7 on 20.11.1998. The aforesaid analysis shows that this document Ex.DW3/A is *ex facie* false.

94. Apart from the said document, copy of a plaint filed before Id. Civil Judge, Aligarh has been placed on record wherein the suit was filed in the year 2001 by accused No.7 against accused No.1 for recovery of amount wherein *ex parte* judgment was passed. The alleged resignation of accused No.7 is of 1998 whereas suit for recovery was filed in the year 2001. It leads to only one hypothesis that the said suit was filed only for the purpose of creating a defence in the present case.

95. The very fact that these documents were procured later on shows that the accused persons No.6 and 7 were well aware of the communications which were being addressed by accused No.1 company to SEBI in pursuance of the press release and the public notice issued by SEBI regarding CIS. Indeed, this fact

demonstrates that they were in active participation in the affairs of accused no.1 company and took every step to create a defence for the purpose of present case. Therefore, it is proved beyond reasonable doubt that accused No.6 and 7 were the directors in the company when the brochure floating the CIS was issued and also at the time when the investments were made by the public. It is also proved beyond reasonable doubt that they were responsible and instrumental in floating the CIS, being the directors of accused No.1 company and therefore, they were duty bound to file the winding up report and repay the money back to the investors which was never done by the accused No.1 company or these active directors. The violation of non-filing of the winding up report and repayment to the investors are the violations of a continuing nature till the time the amount is not paid back to the investors and the scheme is not wound up in terms of Regulation 73 of CIS Regulations. No winding up report or the details of repayment to the investors was stated to have been filed till the filing of the complaint. Hence, the complaint has been filed well within the period of limitation.

96. Ld. counsel for the accused persons have placed great reliance on ***SEBI vs. Gaurav Varshney & Anr.*** (Supra). However, the facts of that case were completely different from case in hand. Hence, the judgment in ***SEBI vs. Gaurav Varshney & Anr.*** (Supra) is not applicable to the present case.

97. Accused No.1 company has chosen not to appear despite service of the summons.

98. In the preceding paras, it has been demonstrated as to how apart from their nomenclature as directors of accused No.1 company, accused No.6 and 7 were instrumental in floating the CIS in order to dupe general public by allowing their names to be put on the brochure. There cannot be any other mechanism to prove their role in violation of the provisions of the SEBI Act and Regulations. Hence, this Court is of the opinion that accused No.6 and 7 were responsible for day to day affairs of accused No.1 company specifically in relation to floating of CIS. Despite directions issued for winding up of the scheme and repayment to investors, neither accused No.1 company nor accused No.6 and 7 complied with the orders and failed to make repayment to investors and file the winding up report before SEBI. Hence, accused No.1 company Neelgiri Forest Ltd., accused no.6 Ranbir Singh and accused No.7 Anand Varshney are held guilty of the offence under Section 11B, 12(1B) of SEBI Act r/w Regulation 5(1), 68(1), 68(2), 73 and 74 of CIS Regulations, punishable under Sections 24(1) and 27 of SEBI Act, 1992 and convicted accordingly.

**Announced in open court
on 08.04.2024**

VANDANA
JAIN

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VANDANA JAIN
Date: 2024.04.08
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(Vandana Jain)

**ASJ-03 & Special Judge (Companies Act)
Dwarka Courts (SW)/New Delhi/08.04.2024**

**Note: This judgment contains fifty-two (52) pages and having
my signature on each page.**

VANDANA
JAIN

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15:46:17 +0530

(Vandana Jain)

**ASJ-03 & Special Judge (Companies Act)
Dwarka Courts (SW)/New Delhi/08.04.2024**