

IN THE COURT OF PRINCIPAL SESSIONS JUDGE, CHENNAI

Present : Thiru.S.Karthikeyan, M.A., M.L., M.Sc., PGDCFSc.,

Principal Sessions Judge.

Thursday, the 21st day of November, 2024.

Sessions Case No: 454 / 2010

**(C.C.No.8798 / 2002 on the file of the learned XXIII Metropolitan Magistrate,
Saidapet, Chennai-18)**

1. Name of the Accused	:	1. Brammaputhra Plantations Pvt. Ltd., a company incorporated under the provisions of Companies Act, 1956 and having its registered office at XX-1A, 425, Market Road, Tripunithura, Kochi-682301. 2. Jose Mathew, Director / Officer-in-charge of the Accused No.1, Address : Karaparambil House, South Paravoor, PO, Ernakulam District. 3. Jolly Jose, Director / Officer-in-charge of the Accused No.1, Address : Karaparambil House, South Paravoor, PO, Ernakulam District.
2. Name of the Complainant	:	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 D'Mante Buildings, 3rd Floor, 32, D'Mante Colony, TTK Road, Alwarpet, Chennai-600018 and represented by its Assistant General Manager Shri.U.Venugopal.
3. Charges Framed	:	U/s 24(1) and 27 of the Securities and Exchange Board of India Act, 1992.
4. Plea of Accused	:	The Accused have pleaded not guilty.
5. Finding of the Court	:	The accused No1 company and 2nd accused are found guilty u/s 24(1) r/w 27 of SEBI Act.
6. Sentence or Order	:	In the result, this court found the 1 st Accused company guilty for the offence punishable u/s 24(1) of SEBI Act r/w Sec.27 of SEBI Act and imposed a fine of Rs.10 lakhs and this court found the 2 nd Accused guilty for the offence punishable u/s 24(1) of SEBI Act r/w Section 27 of SEBI Act and sentenced him to undergo 3 years simple imprisonment and to pay a fine of Rs.5 lakhs, in default, to undergo 1 year simple imprisonment. The 3 rd Accused is acquitted of the offence punishable u/s 24(1) of SEBI Act r/w Section 27 of SEBI Act.
8. Counsel for the complainant	:	M/s.N.P.Kumar, Special Public Prosecutor.
9. Accused defended by	:	M/s.V.Rajesh, Counsel for the Accused.

This case came up on 14.11.2024 before this court for final hearing in the presence of M/s.N.P.Kumar, the Special Public Prosecutor for the complainant and of M/s.V.Rajesh, the Counsel for the Accused and upon hearing both sides and upon perusing the documents and material papers of this case, having stood over for considerations till this day, this Court has delivered the following:-

JUDGMENT

The Securities and Exchange Board of India has presented the complaint against the Accused herein for the alleged offences punishable u/s 24(1) and 27 of SEBI Act, before the learned XXIII Metropolitan Magistrate, Saidapet, Chennai and the same was taken on file in C.C.No.8798/2002.

2. Summons were issued to the Accused and on their appearance, copies of the complaint and documents relied on by the complainant were furnished to the Accused u/s 207 of Cr.P.C.

3. On the side of the complainant, on 09.09.2003, P.W.1 was examined and Ex.P1 to P5 were marked. The Accused did not cross-examine the witness. On the same day, the prosecution evidence was closed. Thereafter, on 07.12.2002, the Accused has filed Sec.311 Cr.P.C. application and the same was allowed and the case was posted for the cross-examination of the witness. On 15.09.2004, P.W.1 was cross-examined and Ex.P6 was marked through P.W.1. The matter was posted for defence side evidence. On the side of the defence D.W.1 was examined on 15.02.2005 and Ex.D1 to D3 were marked. Thereafter, the matter was not proceeded with for the one reason or the other and on 24.9.2010, the learned

XXIII Metropolitan Magistrate found that the occurrence was happened after the amendment made in SEBI Act. After the amendment, only the Court of Sessions has jurisdiction to try the offences and therefore, the learned XXIII Metropolitan Magistrate has committed the said case to this court for trial.

4. On committal, this court has taken cognizance of the said case and taken on file in S.C.No.454/2010 and made over to Additional District Judge / FTC-V, Chennai. On appearance of the Accused, charges were framed on 20.12.2010 u/s 24(1) and 27 of Securities and Exchange Board of India Act. The charges were read over and explained to the Accused. The Accused denied the charges and claimed to be tried. Thereafter, summons were issued to the witnesses and on 07.11.2011 P.W.1 was examined and Ex.P1 to P22 were marked. On 23.08.2016, P.W.1 was cross-examined by the Accused. With the evidence of P.W.1, the prosecution side was closed. The incriminating materials appeared in the evidence were put to the Accused u/s 313(1)(b) of Cr.P.C. and the Accused denied them as false. On the side of the defence, D.W.1 was examined on 21.08.2023 and was cross-examined on the same day. The second Accused Jose Mathew was examined as D.W.2 on 17.11.2023 and was cross-examined on the same day. Ex.D1 to D3 were marked through them. The defence side evidence was closed on 17.11.2023. On 22.3.2024, the Official Liquidator filed a report. The objection to the said report was called for.

5. Both sides filed written submissions and they were taken on record. The defence counsel was heard on 14.11.2024.

6. This court has perused the evidence placed before this court, oral and documentary. Materials perused. Both sides written arguments perused.

7. The point for determination is :

Whether the prosecution has proved the charged levelled against the Accused beyond all reasonable doubt?

POINT:

8. The complainant Securities and Exchange Board of India has come up with the present complaint for the alleged offences punishable u/s 24(1) and 27 of SEBI Act. The complaint reads as follows :

(i) The last decade had witnesses initiative by private entrepreneurs to undertake plantation activities on a commercial scale. However, it was noticed that the promoters themselves invested a minimal amount in such ventures and raised a majority of the funds from ordinary investors in the absence of any regulatory mechanism. The high returns promised by these schemes coupled with questionable claims of fiscal incentives and effective marketing helped many of these companies to mobilize large amounts over a period of time. 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 and the SEBI was asked to formulate the regulations for them. The SEBI in the year 1999, notified regulations for the activities of collective investment schemes, titled as Securities and Exchange Board of India (Collective Investment Schemes) Regulations, 1999. The Accused No.1 is operating collective investment schemes, and raised an aggregate amount of nearly Rs.0.27

crores from the general public. The Accused No.1 company filed information / details with SEBI regarding its collective investment schemes pursuant to SEBI press release dated November 26, 1997 and / or public notice dated December 18, 1997. In terms of Chapter IX of the said regulations, any person who had been operating a collective investment schemes at the time of commencement of the said regulations shall be deemed to be an existing collective investment scheme and shall comply with the provisions of the said Chapter IX. Further, in terms of the said Chapter IX any person who immediately prior to the commencement of the said regulations was operating a collective investment scheme shall make an application to SEBI for grant of registration within a period of two months from the date of notification of the said regulations.

(ii) The SEBI vide its letters dated December 15, 1999 / December 29, 1999 and also by way of a public notice dated December 10, 1999, gave intimation to the Accused No.1, directing it to send an information memorandum to all the investors detailing the state of affairs of the schemes, the amount repayable to each investor and the manner in which such amount is determined. As per the aforesaid letters of SEBI, the information memorandum to the investors was required to be sent latest by February, 28, 2000. The SEBI having regard to the interest of investors and request received from various persons operating collective investment schemes extended the last date of submitting the application by existing entities upto March 31, 2000 and the same was declared by SEBI vide a press release and a public notice. However, the Accused No.1 failed to make any application with SEBI for registration of the collective investment schemes being operated by it as per the said regulations.

(iii) In terms of Regulation 73(1) of the said regulations, on existing collective investment schemes which failed to make an application for registration with SEBI, shall wind up the existing collective investment schemes and repay the amounts collected from the investors. Further, in terms of Regulation 74 of the said regulations, an existing collective investment scheme which is not desirous of obtaining provisional registration from SEBI shall formulate a scheme of repayment and make such repayment to the existing investors in the manner specified in Regulation 73. However, the Accused No.1 neither applied for registration under the said regulations nor took any steps for winding up of the schemes and repayment to the investors as provided under the regulations and as such had violated the provisions of Sec.12(1B) of Securities and Exchange Board of India Act, 1991 and Regulation 5(1) read with Regulation 68(1), 68(2), 73 and 74 of the said regulations. On December 7, 2000, SEBI by exercising the powers conferred upon it under Sec.11B of Securities and Exchange Board of India Act, 1992 directed the Accused No.1 to refund the money collected under the aforesaid collective investment schemes of the Accused No.1 to the persons who invested therein within a period of one month from the date of the said directions.

(iv) However, despite the above directions by SEBI, the Accused No.1 did not comply with the said Regulations and from this, it is clear that the Accused No.1 is intentionally and with dishonest intentions evading the repayment of the amounts collected by it from the investors. The Accused No.1 raised a total amount of nearly Rs.0.27 crores by its own admission and its failure to refund the amounts to the general public who invested their hard-earned money in the schemes operated by the Accused No.1 caused huge pecuniary damage

to them. In view of the above, it is charged that the Accused No.1 has committed the violation of Sec.12(1B) of Securities and Exchange Board of India Act, 1992 and Regulation 5(1) read with Regulation 68(1), 68(2), 73 and 74 of the Securities and Exchange Board of India (Collective Investment Schemes) Regulations, 1999, which is punishable under Sec.24(1) of Securities and Exchange Board of India Act, 1992. The Accused No.2 and 3 are the Directors of the Accused No.1 and as such persons in charge of and responsible to the Accused No.1 for the conduct of its business and are liable for the violations of the Accused No.1 as provided under Sec.27 of Securities and Exchange Board of India Act, 1992. Hence, the complaint.

10. In order to prove the said complaint, the complainant has examined P.W.1 on his side and exhibited Ex.P1 to P22.

11. The learned counsel for the complainant has filed his written submissions and additional written notes of arguments on behalf of the complainant. The said written notes of arguments and additional written notes of arguments are extracted below :

Brief Facts of the case:-

a) The Complainant is the Securities and Exchange Board of India (hereinafter referred to as “SEBI” or the “Complainant”). The complainant is a statutory body which has been established under the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “the SEBI Act”) for the protection and the interests of investors in securities and to promote the development of, and to regulate the securities market and for matters connected therewith or incidental thereto.

b) The decade of the 1990s witnessed an initiative by private entrepreneurs to undertake plantation activities on a commercial scale. However, it was noticed that the promoters themselves invested a minimal amount in such ventures and raised a majority of the funds from ordinary investors in the absence of any regulatory mechanism, the high returns promised by these schemes coupled with questionable claims of fiscal incentives and effective marketing helped many of these companies to mobilize large amounts over a period of time. The initial success in mobilizing funds by some of these companies led to a mushrooming of such schemes throughout the country.

c) Section 12 (1B) of the SEBI Act was incorporated in the SEBI Act w.e.f. 25.01.1995 and in terms of said Section, no person shall sponsor or cause to be sponsored or carry on or cause to be carried on any venture capital funds or collective investment scheme including mutual funds, unless he obtains a certificate of registration from the Board in accordance with the regulations and continuation of existing schemes were allowed till regulations are framed.

d) 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 November 18, 1997, conveying that such schemes should be treated as

Collective Investment Schemes (CIS) coming under the SEBI Act. In order to regulate such CIS both from the point of view of investor protection as well as promotion of legitimate investment activity, SEBI was asked to formulate the regulations for them. In continuance to the same, a press release dated November 26, 1997 and a public notice dated December 18, 1997 was issued.

e) Pursuant to the above notice/press release, the Accused no.1 company viz. Brammaputra Plantations Pvt. Ltd., had filed the information / details with SEBI regarding its CIS. The said Accused was operating CIS and had collected money at least Rs.0.27 crore from the gullible investors. In the year 1999, SEBI notified regulations for regulating the activities of CIS, titled as Securities and Exchange Board of India (Collective Investment Schemes) Regulations, 1999. (Hereinafter referred to as 'CIS Regulations' or the said regulations').

f) In terms of Chapter IX of the said regulations, any person who had been operating a CIS at the time of commencement of the said regulations shall be deemed to be an existing CIS and shall comply with the provisions of the said Chapter IX. Further, in terms of the said Chapter IX any person who immediately prior to the commencement of the said regulations was operating a CIS shall make an application to SEBI for grant of registration within a period of two months from the date of notification of the said regulations. However, having regard to the interest of investors and request received from various persons operating CIS,

SEBI extended the last date of submitting the application by existing entities upto March 31, 2000 and the same was declared by SEBI vide a press release and a public notice. The Accused No.1 failed to make any application with SEBI for registration of the CIS within the timeline prescribed by SEBI or even after that.

g) Further, in terms of Reg. 73 (1) of the said regulations, an existing CIS which failed to make an application for registration with SEBI, shall wind up the existing CIS and repay the amounts collected from the investors. Further, in terms of Reg. 74 of the said regulations, an existing CIS which is not desirous of obtaining provisional registration from SEBI shall formulate a scheme of repayment and make such repayment to the existing investors in the manner specified in Regulation 73 of the said Regulations.

h) SEBI thereafter, vide its letters dated December 13, 1999 / December 29, 1999, gave intimation to the Accused No.1 directing it to send an information memorandum to all the investors detailing the state of affairs of the schemes, the amount repayable to each investor and the manner in which such amount is determined. As per the aforesaid letters of SEBI, the information memorandum to the investors was required to be sent latest by February 28, 2000. The Accused however, failed to comply the same.

i) As no winding up and repayment details were submitted by the said Accused, SEBI issued a Show Cause Notice to the Accused and thereafter, on December 7, 2000, by exercising its powers conferred upon it under Sec. 11 B of SEBI Act, directed the Accused no.1 to refund the money collected under the CIS to the persons who invested in CIS within a period of one month from the date of the said directions.

j) However, despite the above directions by SEBI, the Accused No.1 neither applied for registration under the said regulations nor took any steps for winding up of the schemes and repayment to the investors as provided under the CIS regulations.

k) The Accused No.1 raised a total amount of atleast Rs.0.27 Crore by its own admission and failed to refund the amount to the general public who invested their hard-earned money in the schemes operated by the Accused No.1. The same caused huge pecuniary damage to the investors. In view of the same, it is submitted that the Accused No.1 has committed the violation of Sec.12 (1B) of SEBI Act and Reg.5 (1) read with Reg. 68(1), 68(2), 73 and 74 of the CIS Regulations, which is punishable under Sec.24 (1) of the SEBI Act.

l) The Accused No.2 and 3 are the promoters of the CIS launched by Accused no.1, directors of the Accused No.1 company and as such persons in charge and responsible to the

Accused No.1 for the conduct of its business, are liable for the acts and omissions of the Accused No.1, as provided under Sec. 27 of the SEBI Act.

II Evidences / documents before the Hon'ble Court: -

m) In order to prove the case beyond reasonable doubt, the complainant examined Mr. Pradeep Ramakrishnan as its witness. Exhibits Nos. 1 to 22 were marked through Prosecution Witness 1 (PW1) viz. Mr. Pradeep Ramakrishnan. Further, the Accused had examined the Official Liquidator of the first Accused company as Defense Witness 1 (DW1) and Accused No. 2 was also examined as Defense Witness No. 2 (DW2).

III. Legal provisions violated by the Accused:

n) Sec.12 (1B) of SEBI Act, Reg.5 (1) read with Regulations 68(1), 68(2), 73 and 74 of the CIS Regulations. Violation of the said provisions are punishable u/s Sec.24 (1) of the SEBI Act.

IV) Points of Arguments: -

o) It is submitted that it is evident from the Exhibit 3 and Exhibit 9 that the Accused had issued at least 4 CIS of mangium plantation and had mobilized money from more than 1600 investors (165 investors in Supreme Scheme + 362 investors in Small Scheme + 1135 investors in Super Scheme). Further, it is evident from the said Exhibit 3, that the Accused

no.2 and 3 were the promoters of the said schemes. Also, it is clear from the Exhibit 9 that total number of investors as per the Accused themselves as on September 10, 1998 were 10,743. Thus, it is crystal clear that there are discrepancies in the number of investors from whom the Accused mobilized the amount as in one letter (Exhibit 3), the Accused has specified 1662 investors (in total for all the schemes) and in another letter (Exhibit 9) has specified 10,743 investors. Further, as per the deposition of DW2 (Accused no.2), the Accused no.1 had collected/mobilized amount of Rs.0.27 crore from the investors in the years 1994 and 1995. Further, he also stated that they have refunded Rs.2,62,000/- only. The Accused no.2 also had admitted in his deposition as a witness of having received letters/communications from SEBI in the years 1998, 1999 and 2000. Further, the Accused neither denied of running the said CIS without obtaining the registration from SEBI nor denied of having not refunded the entire amount collected from the gullible investors.

p) In fact, it is evident from the Exhibits 10, 11, 13, 14 & 15 that SEBI had always notified/informed the Accused of necessary compliance that they had to comply with. As no compliance was forthcoming from the Accused, SEBI issued a Show Cause Notice (Exhibit 17) to the Accused seeking a reply as to why no action should be initiated against them, for their failure to obtain registration from SEBI and for not complying with the provisions of Section 12(1B) of the SEBI Act and other provisions of CIS Regulations. It is submitted that Accused were always aware of the non-compliance on their part and had sought one year time for necessary compliance which is evident from Exhibit 18. Further, it is also evident that even after SEBI passing an order dated December 07, 2000, the Accused did not

comply with the necessary requirements enumerated in the CIS Regulations.

q) The Accused no.2 in his deposition before the Hon'ble Court had admitted of receiving all the communications/letters issued by SEBI from the years 1998 to 2000. Further, the Hon'ble High Court of Kerela had appointed the official liquidator only on July 19, 2001 and till that time even as per the Accused no.2, only amount of Rs.2,62,000/- were refunded to certain investors. The complainant however, denies that the said amount was ever refunded to any investors as no proof of the refund of the said amount has been placed/submitted either before the complainant or before the Hon'ble Court. Further, though the official liquidator in his deposition before the Hon'ble Court stated that he refunded to 925 unsecured creditors after adjudicating 4213 claims, it is not proved /clear that the said unsecured creditors were the actual investors in the CIS of the Accused.

r) Chapter IX of the CIS regulations mandates that any person who had been operating a CIS at the time of commencement of the said regulations shall be deemed to be existing CIS and shall comply with the provisions of the said Chapter IX. Further, in terms of the said Chapter IX read with Regulation 5 of the CIS regulations, any person who immediately prior to the commencement of the said regulations was operating a CIS shall make an application to SEBI for a grant of registration within a period of two months from the date of notification of the said regulations.

s) Further, in terms of Reg. 73(1) of the said regulations, an existing CIS which failed to make an application for registration with SEBI, shall wind up the existing CIS and repay the amounts collected from the investors. Moreover, in terms of Reg.74 of the said regulations, an existing CIS which is not desirous of obtaining provisional registration from SEBI shall formulate a scheme of repayment and make such repayment to the existing investors in the manner specified in Reg.73 of the said Regulations.

t) Thus, it is proved beyond reasonable doubt that the Accused was operating CIS without obtaining registration from SEBI, had mobilized money (atleast Rs.0.27 crore) from gullible investors (10,743 investors), not obtained registration from SEBI, did not refund the said amount to the investors from whom amount was mobilized, failed to comply with the directions of SEBI issued vide order dated December 07, 2000, inspite of knowing that they were under the legal obligation to comply with the same. The complainant therefore, submits that the Accused no.1 had violated the provisions of Section 12(1B) of the SEBI Act and Regulation 5(1) read with Regulations 68(1)(2), 73 and 74 of the said Regulations and committed an offence u/s24(1) of the SEBI Act. Further, the Accused no.2 and 3 being the promoters of CIS of Accused no.1 and directors of the Accused no.1, are incharge and responsible to the Accused no.1 for the conduct of the business of Accused no.1, are equally responsible for the acts and omissions of Accused no.1 by virtue of Section 27 of the SEBI Act.

u) It is further submitted that the offense alleged in the complaint stands committed prior to initiation of the winding up proceedings against the Accused company. Therefore, the winding up proceedings does not have any effect on the liability of the Accused for the violations committed by them. Further, without prejudice to the above, filing of winding up petition cannot be a bar to the present prosecution proceedings against the Accused persons. Also, it is submitted that the argument/contention of the Accused that the complaint is barred by limitation has been held to be not sustainable by the Hon'ble Madras High Court in its order dated 26.10.2018, in the Criminal Petition O. P. No.3158 of 2011, filed by the Accused. Without prejudice to the same, it is submitted that the offence committed by the Accused is continuing offence as till date entire amount of Rs.0.27 crore has not been refunded to the said number of investors. Without prejudice to the above, it is further submitted that CIS Regulations came into force in the month of October 1999. After giving sufficient opportunity to the Accused, the complainant issued directions u/s 11B of the SEBI Act vide order dated December 07, 2000, thereby directing the Accused to repay the amount to the investors and wind up the CIS as per Regulation 73 of the CIS Regulations. Despite the same, the Accused failed to comply with the said directions and with the provisions of CIS Regulations and their offence is a continuing one and therefore, the complaint is not barred from period of limitation and the Accused can be punished accordingly.

v) It is further submitted that the complainant witness has fully corroborated the case of complainant. The Accused has miserably failed to cast doubts on the testimony of the

complainant witnesses. The incorporation of the Accused No. 1 company, involvement of the Accused persons in CIS and the fact that they have collected amount from investors stands well proven. The Accused did not comply with legal provisions enumerated above. Furthermore, the Accused persons have not denied that they have received the above mentioned notices and communications. In fact, the Accused no.2 admitted of receiving all the communications/notices issued by SEBI from the years 1998 to 2000. It is pertinent to note that even after receiving of the said notices /communications, they had neither applied for the registration nor they wound up the CIS and returned the money to the investors. In the light of documentary evidence produced before this Hon'ble court as well as the oral evidence of the Complainant witness, it is humbly submitted the complainant has been able to prove its case beyond reasonable doubt.

w) That, Accused Nos. 2 and 3 have not denied that they are the directors and promoters of the CIS at the relevant time, and the same is also evident from Exhibit 2 and deposition of the Accused no.2. Being the directors of the Accused No. 1 company, they are responsible for the conduct of its business and therefore, in view of section 27 of the SEBI Act, they are equally liable for the offences committed by the company. As discussed by Hon'ble Supreme Court in N. Rangachari Vs. BSNL, 2007 Cri.L.J. 2448:

“13. A Company, though a legal entity, cannot act by itself but can only act through its directors. Normally, the board of Directors act for and on behalf of the company.....”

It is therefore, pertinent to submit that, that all the press release and letters / communications issued by the Complainant to the Accused No. 1 prior to the institution of the complaint as already deposed by CW1 are duly proved. The genuineness of the letters has not been challenged by the Accused, therefore, it is deemed to have been admitted by the Accused.

x) It is pertinent to note that, none of the Accused had been able to challenge the testimony of the complainant witness regarding the mobilization of funds and infact, the Accused no.2 in his deposition have admitted that they mobilized fund to the tune of 0.27 crores of rupees. Hence, it has been proved that the Accused sponsored and floated CIS and mobilized funds, without due compliance of CIS Regulations.

y) Attention of this Ld. Court is invited to the Judgment delivered by Hon'ble High court of Delhi dated February 8, 2011 in Crl Appeal No. 220/2010 (Ankur Forest & Project Development India Lrd. & Ors V SEBI) upholding the order passed by the Ld. Sessions Judge dated January 29 2010 convicting the Accused persons (Company as well as the directors) for violation of Regulations 5(1) read with regulations 68(1), 68(2),73 & 74 of SEBI CIS Regulations 1999 r/w Section 24 & 27 of the SEBI Act. The Order passed by the Hon'ble Delhi High Court was impugned before the Hon'ble Supreme Court in appeal which was also dismissed by the Hon'ble Supreme Court vide its order dated 23/9/2011.

z) The Complainant is also relying on the judgment passed by the Madras High Court in Crl. R.C. 842/2005 titled M/s Rhodanthe Agro Ltd. & Ors. vs. Securities and Exchange

Board of India, Trial Court came to the conclusion that non-compliance of Regulations 73 and 74 was a continuing offence, since the petitioner had failed to wind up the scheme and repay the amount to the investors. Consequently, the application under Section 468 Cr.P.C. was dismissed. The same legal position was also concurred by the Hon'ble Delhi High Court in Samarpan Agro and Livestock Ltd (2010) 10 DEL CK 0127.

A conjoint reading of the provisions of Reg. 68, 73 and 74 of the CIS Regulations clearly shows that if a person had been carrying on a CIS at the time of commencement of the Regulations, it was deemed to be an existing CIS. Such a person was, thus, under a legal obligation to comply with these regulations framed under the Act. As envisaged under Regulation 68 (2) of the CIS Regulations such person had to make an application to the Board in the manner as specified in Regulation 5 of the said Regulations. If such an application was made, the Board was to deal with the same in the manner as provided in Regulation 68 (3) of the CIS Regulations. In case any person carrying on the existing CIS failed to make such an application to the Board for registration or had been refused a provisional certificate, it was under a legal obligation to wind up the existing CIS by following the procedure as laid down in Regulation 73 of the said Regulations in particular by sending an information memorandum to the investors who have subscribed to the CIS, within two months from the date of intimation from the Board, detailing the state of affairs of the scheme, the amount repayable to each investor and the manner in which such amount is determined and to refund the payment to the existing investors in terms of Regulation 74 of the CIS Regulations by following the procedure as specified in Regulation 73 of the said

Regulations.

aa) In the present case the Complainant has proved that the Accused floated CIS and continued to function as CIS without compliance of the above rules and regulations and had not sent the Information Memorandum to the investors and refunded the entire amount to the said number of investors. Hence, they are liable for the contravention of the provisions of CIS Regulations.

ab) Contravention of Section 12(1B) of the SEBI Act and the aforesaid provisions of the CIS Regulations is an offence punishable with the imprisonment for a term which may extend to one year or with fine or with both, which punishment now stands enhanced to ten years or with fine of Rs. 25 crores or both with effect from 29th October, 2002 by virtue of the Securities and Exchange Board of India (Amendment) Act, 2002 (59 of 2002). Section 472 Cr.P.C. provides that in case of a continuing offence, a fresh period of limitation shall begin to run at every moment of the time during which the offence continues. In State of Bihar vs. Deokaran Nenshi 1973 Cri.L.J 347 issue before the Supreme Court was whether failure to submit returns within the prescribed time under the Mines Act is a continuing offence or not. The Supreme Court after considering various judicial pronouncements summarized “continuing offence” as under:- “A continuing offence is one which is

susceptible of continuance and is distinguishable from the one which is committed once and for all. It is one of those offences which arises out of a failure to obey or comply with a rule or its requirement and which involves a penalty, the liability for which continues until the rule or its requirement is obeyed or complied with. On every occasion that such disobedience or non-compliance occurs and recurs, there is the offence committed. The distinction between the two kinds of offences is between an act or omission which constitutes an offence once and for all and an act or omission which continues and therefore, constitutes a fresh offence every time or occasion on which it continues. In the case of a continuing offence, there is thus the ingredient of continuance of the offence which is absent in the case of an offence which takes place when an act or omission is committed once and for all.”

ac) In *Bhagirath Kanoria and Ors. Vs. State of M.P.* AIR 1984 SC 1688 the issue involved was as to whether non-payment of employers’ contributions under the Employees Provident Fund and Family Pension Fund Act 19 of 1952 was a continuing offence or not. It was held that failure on the part of employers to pay employers’ contributions before the due date to the Employees Provident Fund was a continuing in nature. Company was unquestionably liable to pay their contribution to the Provident Fund before the due date and it was within their power to pay it, as soon after the due date had expired as they willed. The late payment could not have absolved them of their original guilt but it would have snapped the recurrence. Each day that they failed to comply with the obligation to pay their contribution to the fund, they committed a fresh offence. Thus, law of limitation cannot apply. In para 21

of the judgment it was observed as under :-

ad) “For these reasons, we are of the opinion that the offence of which the appellants are charged, namely non-payment of the employer's contribution to the Provident Fund before the due date, is a continuing offence and, therefore, the period of limitation prescribed by Section 468 of Code cannot have any application. The offence which is alleged against the appellants will be governed by Section 472 of the Code, according to which, a fresh period of limitation begins to run at every moment of the time during which the offence continues.”

For arriving at the aforesaid view, Supreme Court considered various judgments including three decisions from the courts at England and it would be relevant to refer these judgments and the view taken therein :-

“1. In *Best v. Butlar and Fitzgibbon* [1932] 2 K.B. 108, the English Trade Union Act, 1871 made it penal for an officer or a member of a Trade Union to wilfully withhold any money, books, etc. of the Trade Union. It was held in that case that the offence of withholding the money was a continuing offence, the basis of the decision evidently being that every day that the moneys was wilfully withheld, the offence was committed.

2. In *Verney v. Mark. Fletcher & Sons Ltd.* [1909] 1 K.B. 444, Section 10(1) of the Factory and Workshop Act, 1901 provided that every fly-wheel directly connected with steam, water or other mechanical power must be securely fenced. Section 135 provided the penalty for noncompliance with Section 10(1), while Section 146 provided that information of the

offence shall be laid within three months after the date on which the offence comes to the knowledge of the Inspector. It was held that the breach of Section 10(1) was a continuing breach and therefore the information was in time. Every day that the fly-wheel remained unfenced, the factory was run otherwise than in conformity with the Act of 1901 and, therefore, the offence defined in Section 10 was a continuing offence.

3. The third English case referred to is *The London County Council v. Worley* [1894] 2 Q.B. 826, in which Section 85 of the Metropolis Management Amendment Act, 1852 prohibited the erection of a building on the side of a new street in certain circumstances, without the consent of the London County Council. The Court construed Section 85 as creating two offences : building to a prohibited height and, continuing such a structure already built after receiving a notice from the County Council. The Court held that the latter offence was a continuing offence.

4. In *Emperor v. Karandas* MANU/MH/0048/1942 : AIR1942Bom326 , Section 390(1) of the Bombay City Municipal Act, 1888 provided that no person shall newly establish in any premises any factory of a certain description without the previous permission of the Commissioner nor shall any person work or allow to be worked any such factory without such permission. It was held by the High Court that establishing a new factory was an offence committed once and for all but working it without permission was a continuing offence.

5. In *The State of Bombay v. Bhiwandiwalla* MANU/MH/0102/1955 : (1956)IILLJ153Bom it was held that the offence of using the premises as a factory without a licence is a continuing offence.

6. In *State of Bihar v. J.P. Singh* 1963 BLJR 782, the High Court of Patna held that conducting a restaurant without having it registered and without maintaining proper registers were continuing offences.

ae) In the instant case the Accused No. 1 company was operating CIS, collected money from the investors. Under Section 12(1B) of the SEBI Act, no person could have carried out a collective investment scheme unless he obtained a certificate of registration from the Board in accordance with the regulations framed under the Act. Regulations were framed in the year 1999 and notified to all concerned including the Accused. As per Regulation 68 of the CIS Regulations, any person operating a CIS at the commencement of the regulations was under legal obligation to get the existing CIS registered with the Board and obtain a certificate of registration. If it failed to do so, it was a legal mandate to such person to wind up the existing CIS by following the procedure as prescribed under Regulation 73 of the said Regulations. Further, Regulation 74 of the CIS Regulations provides that existing CIS which was not desirous of obtaining provisional registration from the Board was legally bound to formulate a scheme of repayment and make such repayment to the existing investors in the manner specified in Regulation 73 of the said Regulations. Nothing has been

placed on record to suggest that Accused has complied with any of the aforesaid provisions of law and wound up the CIS and made the payment to the investors and followed the procedure prescribed under the CIS Regulations. The amount still continues to be retained by the Accused, thus, contravention of Regulations 73 and 74 of the CIS Regulations is continuing in nature and limitation envisaged under Section 468 Cr.P.C. would not be attracted.

af) In Vishnu Prakash Bajpai vs. Securities and Exchange Board of India, The Hon'ble Delhi High Court has also taken similar view. It was held as under:-

“The Company N.R. Plantations (India) Limited contravened the provisions of SEBI Act by not refunding the money collected by it from the persons who had invested money in its Collective Investment Schemes and this offence is a continuing offence till the time the Company complies with the regulations and directions issued by SEBI by refunding the money to the investors.”

ag) In the above facts and circumstances, it is evident that the complainant has duly proved beyond all reasonable doubt that the Accused No. 1 Company was operating CIS with Accused Nos. 2 and 3 and had mobilised funds/money from the public/investors in the form of CIS, the same was managed by the Accused persons and continued to operate as CIS without compliance of provisions of Regulations 68, 73 and 74 of the CIS Regulations. The

complainant states that in view of the above, it is proved that the Accused no.1 company along with Accused nos. 2 and 3 have committed the contravention of Sec.12 (1B) of SEBI Act and Reg.5 (1) read with Reg. 68(1), 68(2), 73 and 74 of the CIS Regulations which is punishable under Sec.24(1) of the SEBI Act. The Accused have also failed to adhere to the directions of SEBI passed vide order dated December 07, 2000, under Sec.11B of SEBI Act for which they are punishable under Sec.24(1) of the said Act, and hence, all the Accused are liable to be punished according to law.

ah) Pursuant to the filing of written submissions by the Complainant, the Official Liquidator on July 19, 2024, has submitted copies of (1) details of 1st dividend paid to the creditors of Accused no.1 Brammaputhra Plantations and (2) Form no.71 (C.P. 27/2001 Brammaputhra Plantations first part – Debts and Claims admitted wholly or in part).

V) Admissibility of the above documents in evidence

ai) Upon examination of the above documents filed by the Official Liquidator, it is observed that initials/signature and stamp of the Official Liquidator are missing on all pages except last one of the above stated documents i.e. only last pages of above mentioned documents carries the stamp and signature of Official Liquidator. Further, the dates on which the payment were claimed to have been made to the creditors are not reflected in the documents

submitted by the Official Liquidator. Moreover, the bank statements of the Accused no.1 from which account/s the payment were claimed to have been made to the creditors have not been provided either to the Hon'ble Court or to the complainant so as to prove that the said amount as reflected in documents submitted by the Official Liquidator, have actually been paid / debited from the account/s of the Accused no.1. Further, the said documents have not been marked earlier by the Official Liquidator before the Hon'ble Court and therefore, cannot be read as part of the records in the matter. In view of this, it is submitted that it is not proved from the documents submitted by the Official Liquidator that the amount as alleged by the Official Liquidator have been actually paid to the creditors.

VI) Relevance of the said documents in the present proceedings

aj) The present complaint has been filed alleging violation of Sec.12 (1B) of SEBI Act and Reg.5 (1) read with Reg. 68(1), 68(2), 73 and 74 of the CIS Regulations which is punishable under section 24(1) of the SEBI Act. The Accused were alleged to have committed the said violations by failing to obtain a certificate of registration for the schemes operated by the Accused or in the alternative to wind up and repay the investors in accordance with the procedure specified in the above CIS Regulations. Hence, the alleged offence stands committed upon failure of the Accused to obtain certificate of registration or in the alternative to wind up the schemes by repaying the entire dues to the investors within the specified time, which is prior to the date of order directing liquidation of the company.

ak) In this background, the payment claimed to have been made by the Official Liquidator, even if established, is not relevant in ascertaining commission of the alleged offence for the following reasons:

i) The alleged offence already stands committed prior to the order dated July 19, 2001 of Hon'ble Kerala High Court whereby an official liquidator of the Company was appointed.

ii) The payment made by the Official Liquidator is governed by the provisions of the Companies Act, which mandates payment to the creditors of the company in accordance of the provisions thereof, which may include creditors other than the investors in the schemes. Further, the claim of the Official Liquidator is that dividend has been repaid to the creditors of the Accused No.1 Company, which admittedly cannot be considered as repayment of the invested amounts to the investors.

iii) Admittedly, only 925 persons were repaid, that too partially, by the Official Liquidator. The said persons may include creditors other than the investors in the CIS schemes. In contrast, the letter dated September 10, 1998, issued by the Accused Company admits mobilization from 10,743 investors.

iv) Further dividend is paid only @18 paisa per rupee i.e. for every one rupee the creditors got only 18 paisa.

On the basis of the above, it is established that the Official Liquidator has not repaid all the investors in the Accused no.1 company.

VII Discrepancy in the refund claims

al) It is further submitted that in the list of Form No.71 (Debts and Claims admitted wholly or in part) as submitted by the Official Liquidator, disproportionate settlement to the creditors have been observed. For example, against claim of Rs.1 Lakh, for some of the creditors Rs.750 was admitted and for some Rs.1500 was admitted and for some of the creditors who have claimed lesser amount (less than Rs.25,000) full claim amount was admitted. As many of the creditors are admitted partially, it is proved beyond reasonable doubt that the creditors were not paid in entirety and therefore, it cannot be inferred or proved that directions/order of SEBI with respect to refund of the amount to each of the investors has been complied with.

am) Thus, even if it is presumed (for the sake of arguments but not admitted by the complainant) that the amount as reflected in the documents submitted by the Official Liquidator has been paid to the creditors of the Accused no.1 and that the said creditors include the original investors of the Accused no.1 then also it is apparently visible from the documents submitted by the Official Liquidator and from his deposition before the Hon'ble Court on August 21, 2023 (wherein he has admitted of giving only 18 paisa per rupee to the

creditors i.e. for every one rupee due to the creditors only 18 paisa were paid to them) that the said creditors were not repaid in entirety. It is therefore, submitted that the creditors or the investors were not refunded fully and also no interest was paid to them for the delay in making the minimal payment/refund made to them.

an) It is therefore, reiterated that the Accused failed to make any application with SEBI for registration of the CIS within the timeline (March 2000) prescribed by SEBI or even after that and had failed to send an information memorandum to all the investors detailing the state of affairs of the schemes, the amount repayable to each investor and the manner in which such amount is determined. As per the letters dated December 13, 1999 / December 29, 1999 of SEBI, the information memorandum to the investors was required to be sent latest by February 28, 2000. As no winding up and repayment details were submitted, post issuing the show cause notice, the complainant had passed an order on December 07, 2000, thereby directing the Accused to refund the money collected under the CIS to the persons who invested in the said schemes within a period of one month from the date of said order. The Accused failed to comply with the above. It is observed that the Official Liquidator was appointed by Hon'ble Kerala High Court only on July 19, 2001. From the above events, it can be inferred that filing of winding up petition by the Accused was nothing but a strategy to bye-pass SEBI directions/orders and with clear intent not to refund the money to the investors.

ao) In view of the above, it is submitted that the Accused failed to comply said provisions of

SEBI Act and CIS Regulations and even the alleged refund made by the Official Liquidator to the creditors is minimal i.e. 18 paise per rupee and moreover, no interest has been paid to them for the delay in making the minimal payment.

ap) In view of the above, it is crystal clear that the Accused have not refunded the entire amount along with interest to the creditors / investors. It is therefore, proved beyond reasonable doubt that the offence has been committed by the Accused and the same has continued till date (as no repayment made in entirety and no interest is paid to any of the creditors), it is therefore, prayed that the Accused including the individuals Accused be held guilty of violating the said provisions of SEBI Act and SEBI (CIS) Regulations and they be punished stringently u/s24(1) of the SEBI Act.

12. On the other hand, the defence counsel has filed written submission for and on behalf of the Accused 1 to 3 and the same is extracted hereunder :

a) "The case of the prosecution is that by excising the powers conferred upon the complainant under section 11B of the SEBI Act 1992, the complainant issued public notice dated 15/12/1999 and 10/12/1999 requiring the existing companies dealing with capital investment scheme either to register with SEBI or to formulate a scheme to refund the amount to the investors and to windup the collective investment scheme and further issued notice dated 07/12/2000 to the Accused directing the Accused No.1 to refund the money collected under collective investment scheme to the tune of Rs.27,00,000/-to the persons who invested the money within a period of one month from the date of the said directions.

Since the Accused No.1 did not comply with the directions, committed violation of section 12(B) of Securities and Exchange Board of India Act 1992 and Reg.5(1) read with Reg.68(1), 68(2), 73 and 74 of the securities and Exchange Board of India(Collective Investment Schemes) Regulations, 1999 which is punishable under Section 24(1) of securities and Exchange Board of India Act, 1992.

b) The complaint was originally filed before the XXIII Metropolitan Magistrate Court on 20/12/2002. The learned Metropolitan Magistrate took the complaint on file in CC No.8798/2002 and conducted the a full fledged trial and at the time of pronouncing the judgment transferred the case before this Hon'ble Court under section 209(A) of criminal procedure code on 24/09/2010 for want of Jurisdiction.

c) The Learned Additional District Judge, Fast Track Court, V, Chennai was pleased to frame charges against the Accused for the alleged offences under section 11(B) and 12(1) (B) of the SEBI Act 1992, punishable U/s.24(1) and 27 of SEBI Act 1992.

I FACTS OF THE CASE

d) The first Accused is a Limited Company established in the year 1994. Accused 1 and 2 are the directors of the company and Accused 2 was in charge of the company .The Accused 3 did not involve in any of the affairs of the first Accused company.

e) The A1 company introduced three schemes of collective investment of Rs.500/, 750 and 1,000/- with an offer of providing mangium and teak wood after 2005 ten years and

collected around Twenty Seven Lakhs rupees (27,00,000/-) from the public in the year 1994-1995. The 1st Accused purchased 123 acres of land at Shankanthirude, Tirunelveli District and planted around Twenty Five Thousand mangium trees and arranged bore well, drip irrigation and other facility spending more than One Crore Rupees (Rs.1,00,00,000/-). The 1st Accused also purchased 67 acres of land at Mannarkadu, Kerala state and planted teak wood.

f) By letter dated 20/04/1998 and 11/05/1998 the complainant issued notice to the Accused requiring to furnish the details of the company and its schemes. By letter dated 22/05/1998, the Accused submitted all the details to the complainant. Again by letter dated 16/10/1998, 30/09/1999, 21/10/1999 and 13/12/1999, the complainant sent circulars to the Accused. By letter dated 12/05/2000, the complainant required the Accused to comply with the Regulations 73(1) and 73(2) of the SEBI Act.

g) Since the process of registration with SEBI is a tedious one and fees and conditions for registration are huge, the Accused being a small company find it very difficult to continue with the business. By letter dated 12/05/2000, the Accused requested the complainant to provide one year time to refund all the investors and wind up the scheme.

h) The Accused started refunding the creditors and refunded Two Lakhs Sixty Five Thousand rupees (Rs.2,65,000/-) to the investors by the month of December 2000.

i) By letter dated 18/12/2000, the complainant compelled the Accused to refund all the

investors within a period of one month from the order failing which initiation of prosecution U/s.24 of SEBI Act, 1992 which prescribes imprisonment for a term which may extend to one year, or with fine, or with both against persons in charge of the business of the scheme and to debar the Accused from operating in the Capital Market for five years and to write to the State Government and local police to register civil/criminal cases against the Accused and to write to the Department of company affairs to initiate process of winding up of the company.

j) The 1st Accused initiated the proceeding to windup the company in the month of January 2001 in High Court of Kerala. By order dated 20/05/2001 made in CP No:27/2001, the Hon'ble High court of Kerala at Ernakulum, directed the Accused to advertise the liquidation process in the Daily newspapers and on 17/07/2001 appointed Provisional Official Liquidator. The Official Liquidator collected all the documents from the Accused in the month of September 2001 and took charge of all the properties of the Accused company. The Official Liquidator floated tenders for the sale of the property in Shankaranthirudu and sold the 123 acres of land at Shankanthirudu obtaining permission from the Hon'ble High Court of Kerala and advertised refund of money to the investor in the news paper's and paid dividend to the investors and keeping the balance amount in the account of CP No:27/2001.

II POINT OF ARGUMENT

k) It is submitted that the complaint was originally filed before the Learned XXIII

M.M.Court, Saidapet. Along with the complaint, the complainant filed a letter dated 07/12/2000 issued to the Accused providing one month time to repay the amount to the investors from 07/12/2000.

l).In Para 14 of the complaint the complainant specifically pleaded that they have issued the direction date 07/12/2000 by exercising the powers U/s. 11(B) of the Act, giving one month time to comply with they directions given in the said letter. In Para 15 it is stated that the Accused have failed to comply with the directions and thus the Accused have committed the offences.

m) It is submitted that the cause of action for the complaint is on the basis that, on completion of one month time from 07/12/2000 the Accused have committed the offense by non complying with the directions. In other words the offence is completed immediately after the expiry of one month time from 07/12/2000.

n) It is submitted that on the day when the direction was issued i.e., on 07/12/2000 as per the Act the punishment contemplated is imprisonment for a period of one year or with fine or with both which also indicated in the letter dated 07/12/2000.The complaint came to be filed before the Learned XXIII Metropolitan Magistrate, Saidapet on 20/12/2002 on which date the complaint was barred by limitation.

o) An amendment to the section 24(1) of the Act came to be notified on 29/10/2002

enhancing the punishment for the offence. On 20/12/2002 when the complaint was filed the complaint was clearly barred by limitation and the complaint came to be filed before a court which is not competent to try the case. In both grounds the complaint cannot be maintained.

p) It is stated that the Government decided to implement SEBI regulation in the year 1997 and required all the existing companies operating capital investment schemes either to register with SEBI or to return the money collected from the investors. The Accused collected money in the year 1994-1995 and has not collected any amount after 1995 and has not collected any amount after 1995. On receipt of notices from the complainant, the Accused started to refund the investors and returned Two Lakhs Sixty Seven Thousand rupees (Rs.2,67,000/-) to the investors within December 2000. Since the complainant refused to give one year time for the repayment and threatened to prosecute the Accused, the Accused started the process to wind up the company in the month of January 2001 before the Hon'ble High Court Kerala. Pursuant to the Order of the Hon'ble High Court Kerala, published the liquidation process in the Daily newspapers on 25/05/2001. By Order dated 21/07/2001 the Hon'ble High Court Kerala appointed the Provisional Liquidator to the Accused company in CP No: 27/2001. The Provisional Liquidator took Custody of the documents and properties of the Accused company as per the directions of the Hon'ble High Court Kerala and sold the property at Shankanthirudu and paid to the investors and keeping the balance amount in the account of CP No:27/2001. The property situated in Mannarkadu, Kerala is under the custody of the Official liquidator.

q) The SEBI Act was amended on 29th October 2002 and the Complainant filed the complaint in the month of December 2002. Thus the complainant prosecuted the company which is under liquidation from July 2001 belatedly in the month of December 2002 which is not sustainable.

r) The Accused submit that there is no complaints from any investor. As per the terms and conditions of the collective investment scheme, the Accused planted mangium and teak wood trees. The scheme is for ten years ending in the year 2005. In spite of huge investment, the Accused started to refund the amount to the investors as per the directions issued by the complainant and finally wound up the company as directed by the complainant.

s) The Accused submit that the complaint did not disclose the period or place of the offence. The charge also did not specify the place or time of offence as such the charge is improper.

t). The 1st Accused company did not collect any amount after the SEBI Act and a Regulations came into force. The 2nd Accused complied with the complainant by submitting all the details of the first Accused company to the complainant, refunded amount to the investors as directed by the complainant and wound up the company as per law. The 3rd Accused did not involve in any of the affairs of first Accused company and violated any of the SEBI Act. The Accused did not involve in any offence as stated and violated the rules and regulation of the SEBI Act and hence liable to be acquitted. In the above circumstances

it is prayed that Hon'ble High Court may be pleased to acquittal the Accused 1,2 & 3 from the alleged offence from the case may pass any other further or other orders as this Hon'ble High Court may be pleased to deem fit and proper in the circumstances of this case and thus render Justice."

13. This court has given its thoughtful consideration to the rival submissions made by either side. Before advertng to the evidences available on record, it is useful to extract Sec.24(1) and Sec.27 of Securities and Exchange Board of India Act, 1992 to appreciate the matter better.

Sec.24 reads as follows :

(1) Without prejudice to any award of penalty by the adjudicating officer ²[or the Board] 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 the Board] or fails to comply with any 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].

12. Sec.24 of the Securities and Exchange Board of India Act, 1992 makes it clear that 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.

14. Sec.27 of the Securities and Exchange Board of India Act, 1992 reads as follows :

[Contravention by companies].--(1) Where a contravention of any of the provisions of this Act or any rule, regulation, direction or order made thereunder an offence under this Act has been committed by a company, every person who at the time the contravention 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 contravention was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an contravention under this Act has been committed by a company and it is proved that the contravention has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly.

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."

15. Sec.27 of the Securities and Exchange Board of India Act, 1992 makes it clear that where a contravention of any of the provisions of the SEBI Act or any rule, regulation, direction or order made thereunder, an offence under the SEBI Act has been committed by a company, every person who at the time the contravention 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. Proviso to Sec.27 makes it very clear that any such person liable to any punishment provided in this Act, if he proves that the contravention

was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence. Therefore, the burden of proof in case of a person, who at the time of contravention was committed, was in charge of and responsible for the company for the conduct of the business of the company as well as the company, shall prove that the contravention was committed without his knowledge or he has exercised all due diligence to prevent the commission of such contravention. As per Sec.2 of Sec.27, notwithstanding anything contained in sub-section (1), where an contravention under the SEBI Act has been committed by a company and it is proved that the contravention has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly.

16. Having the above ingredients in mind, let this court examine the evidences placed before this court to find out whether the prosecution has proved that the Accused herein have committed the contravention of the provisions of the Securities and Exchange Board of India Act, 1992 or not?

17. As stated supra, P.W.1 is the sole witness placed before the court by the complainant to prove the contravention. It is useful to extract the evidence of P.W.1 for better appreciation. P.W.1, in his chief examination, deposed as follows :

"நான் தற்போது செபியில் அசிஸ்டென்ட் ஜெனரல் மேனஜராக பணியில் இருக்கிறேன். எனக்கு இந்த வழக்கில் சாட்சியம் அளிக்க

அதிகார கடிதம் கொடுக்கப்பட்டு இருக்கிறது. அது அ.சா.ஆ.1 ஆகும். சிபி போர்டிலிருந்து 1ம் எதிரிக்கு 20.04.1998 ல் அனுப்பப்பட்ட பிரிவு 11 பி சிபி சட்டத்தின் படி பிறப்பிக்கப்பட்ட உத்தரவை இணைத்து அவரிடமிருந்து பதில் கேட்டு அனுப்பிய கடிதம் அ.சா.ஆ.2 அதற்கு பதில் அ.சா.ஆ.3. அதன்பிறகு எதிரிக்கு 1ம் எதிரி கம்பெனிக்கு அனுப்பப்பட்ட சிபி போர்டிலிருந்து அதன்மீது நடவடிக்கை எடுக்கப்படும் என்று தெரிவித்து அனுப்பிய கடிதம் 11.05.1998 அ.சா.ஆ. 4 ஆகும். அதற்கு 1ம் எதிரி அனுப்பிய கால தாமதத்தை மன்னிக்ககோரிய கடிதம் அ.சா.ஆ.5 ஆகும். மேலும் சில விவரங்கள் எதிரியிடம் கேட்டு சிபி போர்ட் அனுப்பிய 19.06.1998 கடிதம் அ.சா.ஆ.6 ஆகும். அம் மாதிரியாகவே 18.08.1998 அன்று மீண்டும் ஒரு கடிதம் அனுப்பப்பட்டது அது அ.சா.ஆ.7, 14.09.1998 தேதியில் மேலும் சில விவரங்கள் கேட்டு சிபி போர்ட் அனுப்பிய கடிதம் அ.சா.ஆ.8 ஆகும். 1ம் எதிரி அனுப்பிய 10.09.1998 தேதியிட்ட பதில் அ.சா.ஆ.9 ஆகும். மீண்டும் சிபிபோர்ட் 1ம் எதிரிக்கு மேலும் சில விவரங்களை கேட்டு 16.10.1998 தேதியிட்ட கடிதம் அ.சா.ஆ.10 ஆகும். மீண்டும் 11.11.1998 அன்று சிபி போர்ட் பிறப்பித்த உத்தரவின்படி நடக்க தெரிவித்து அவ்வாறு இல்லை எனில் நீதிமன்றத்திற்கு இந்த விவரமாக பிரச்சனை எடுக்கப்பட்டு வழக்கு தொடரப்படும் கடிதம் 11.11.1998 தேதியிட்ட கடிதம் அ.சா.ஆ.11 ஆகும். 30.09.1998 அன்று கட்டாக பணம் வசூலித்து எதிரி செய்ததற்கு யார் யார் இடமிருந்து பணம் வசூலிக்கப்பட்டு என்ற விவரத்தைக்கேட்டு சிபிபோர்ட் அனுப்பிய கடிதம் திருப்பப்பட்டதற்கான திரும்பிய அஞ்சல்கவர் ஆவணம் அ.சா.ஆ.12 ஆகும். 21.10.1999 அன்று சிபி ரெகுலேசன் பற்றி 1வது எதிரிக்கு அனுப்பப்பட்ட கடிதம் அ.சா.ஆ.13 ஆகும். 13.12.1999 தேதியிட்ட சிபி போர்ட் 1ம் எதிரிக்கு அனுப்பிய ரிப்போர்ட் கம்பளையின்ஸ் சம்பந்தமான கடிதம் அ.சா.ஆ.14 ஆகும். 29.12.1999 தேதியிட்ட சிபிபோர்ட் 1ம் எதிரிக்கு அனுப்பிய ரெகுலேசன் சம்பந்தமான ஆவணம் அ.சா.ஆ.15 ஆகும். அது சம்பந்தப்பட்ட அஞ்சல் ஒப்புதல் அட்டை எதிரி பெற்றுக்கொண்டதற்கான அ.சா.ஆ.16 ஆகும். 12.05.2000 ம் தேதியிட்ட சிபிபோர்ட் அனுப்பிய ஆவணம் அ.சா.ஆ.17 ஆகும். அதில் எதிரியின் பதில் மற்றும் சாட்சியம் 15 நாட்களுக்குள் தெரிவிக்க 1ம் எதிரிக்கு அறிவுறுத்தப்பட்டுள்ளது. 1ம் எதிரி அது சம்பந்தமாக ஒரு வருட கால அவகாசம் கேட்டு அனுப்பிய பதில் அ.சா.ஆ.18. 31.07.2000 ம் தேதியிட்ட சிபிபோர்ட் 1ம் எதிரிக்கு கடிதம் அ.சா.ஆ.19 ஆகும். 18.12.2000ம் தேதியிட்ட சிபி 1ம் எதிரிக்கு அனுப்பிய டைரக்ஷன் நகல் அ.சா.ஆ.20 ஆகும். சிபிபோர்ட் பிரசுரித்த டைரக்ஷன்

சம்பந்தமான ஆவணம் அ.சா.ஆ.21 ஆகும். எதிரிகள் பிரிவு 12(1)(பி) பிரிவின் கீழ் சிபி ஆக்டில் குற்றம் புரிந்துள்ளார்கள் என்பதற்காக சிபிபோர்ட் தாக்கல் செய்த புகார் அ.சா.ஆ.22 ஆகும். புகாரில் சொல்லியுள்ள பிரிவின் கீழ் எதிரி குற்றம் புரிந்துள்ளதால் சிபிபோர்ட் நடவடிக்கை எடுத்துள்ளது."

18. From the complaint averments, it is clear that Sec.11(1) of Securities and Exchange Board of India Act, 1992, casts duty upon the SEBI to protect the interest of investors in securities and to promote the development of, and to regulate the securities through appropriate measures. These measures provide for --

(a) regulating the business in stock exchanges and any other securities markets;

(b) registering and regulating the working of stock brokers, sub-brokers, share transfer agents, bankers to an issue, trustees of trust deeds, registrars to an issue, merchant bankers, underwriters, portfolio managers, investment advisers and such other intermediaries who may be associated with securities markets in any manner;

(ba) registering and regulating the working of the depositories, participants, custodians of securities, foreign institutional investors, credit rating agencies and such other intermediaries as the Board may, by notification, specify in this behalf;

(c) registering and regulating the working of venture capital funds and collective investment schemes, including mutual funds;

(d) promoting and regulating self-regulatory organisations;

(e) prohibiting investors' education and training of intermediaries of securities markets;

(f) promoting investors' education and training of intermediaries of securities markets;

(g) prohibiting insider trading in securities;

(h) regulating substantial acquisition of shares and take-over of companies;

(i) calling for information from, undertaking inspection, conducting inquiries and audits of the stock exchanges, mutual funds, other persons associated with the securities market intermediaries and self-regulatory organisations in the securities market;

(ia) calling for information and records from any person including any bank or any other authority or board or corporation established or constituted by or under any Central or State Act which, in the opinion of the Board, shall be relevant to any investigation or inquiry by the Board in respect of any transaction in securities;

(ib) calling for information from, or furnishing information to, other authorities, whether in India or outside India, having functions similar to those of the Board, in the matters relating to the prevention or detection of violations in respect of securities laws, subject to the provisions of other laws for the time being in force in this regard:

Provided that the Board, for the purpose of furnishing any information to any authority outside India, may enter into an arrangement or agreement or understanding with such authority with the prior approval of the Central Government;

(j) performing such functions and exercising such powers under the provisions of the Securities Contracts (Regulation) Act, 1956 (42 of 1956), as may be delegated to it by the Central Government;

(k) levying fees or other charges for carrying out the purposes of this section;

(l) conducting research for the above purposes;

(la) calling from or furnishing to any such agencies, as may be specified by the Board,

such information as may be considered necessary by it for the efficient discharge of its functions;

(m) performing such other functions as may be prescribed.

19. According to the complainant, the last decade had witnessed initiative by private entrepreneurs to undertake plantation activities on a commercial scale. However, it was noticed that the promoters themselves invested a minimal amount in such ventures and raised a majority of the funds from ordinary investors in the absence of any regulatory mechanism. The high returns promised by these schemes coupled with questionable claims of fiscal incentives and effective marketing helped many of these companies to mobilize large amounts over a period of time. Therefore, 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 November 18, 1997, conveying that such schemes should be treated as Collective Investment Schemes coming under the SEBI Act, 1992. 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, SEBI was asked to formulate the regulations for them.

20. In the year 1999, the complainant has framed regulations for collective investment schemes, titled as Securities and Exchange Board of India (Collective Investment Schemes) Regulations, 1999. The Accused No.1 is operating collective investment schemes, and raised an aggregate amount of nearly Rs.0.27 crores from the general public. The Accused No.1

company filed information / details with SEBI regarding its collective investment schemes pursuant to SEBI press release dated November 26, 1997 and / or public notice dated December 18, 1997.

21. In terms of Chapter IX of the said regulations, any person who had been operating a collective investment schemes at the time of commencement of the said regulations shall be deemed to be an existing collective investment scheme and shall comply with the provisions of the said Chapter IX. Further, in terms of the said Chapter IX any person who immediately prior to the commencement of the said regulations was operating a collective investment scheme shall make an application to SEBI for grant of registration within a period of two months from the date of notification of the said regulations. The SEBI vide its letters dated December 15, 1999 / December 29, 1999 and also by way of a public notice dated December 10, 1999, gave intimation to the Accused No.1, directing it to send an information memorandum to all the investors detailing the state of affairs of the schemes, the amount repayable to each investor and the manner in which such amount is determined. As per the aforesaid letters of SEBI, the information memorandum to the investors was required to be sent latest by February, 28, 2000.

22. The SEBI having regard to the interest of investors and request received from various persons operating collective investment schemes extended the last date of submitting the application by existing entities upto March 31, 2000 and the same was declared by SEBI vide a press release and a public notice. However, the Accused No.1 failed to make any

application with SEBI for registration of the collective investment schemes being operated by it as per the said regulations. In terms of Regulation 73(1) of the said regulations, on existing collective investment schemes which failed to make an application for registration with SEBI, shall wind up the existing collective investment schemes and repay the amounts collected from the investors.

23. Further, in terms of Regulation 74 of the said regulations, an existing collective investment scheme which is not desirous of obtaining provisional registration from SEBI shall formulate a scheme of repayment and make such repayment to the existing investors in the manner specified in Regulation 73. However, the Accused No.1 neither applied for registration under the said regulations nor took any steps for winding up of the schemes and repayment to the investors as provided under the regulations and as such had violated the provisions of Sec.12(1B) of Securities and Exchange Board of India Act, 1991 and Regulation 5(1) read with Regulation 68(1), 68(2), 73 and 74 of the said regulations.

24. On December 7, 2000, SEBI by exercising the powers conferred upon it under Sec.11B of Securities and Exchange Board of India Act, 1992 directed the Accused No.1 to refund the money collected under the aforesaid collective investment schemes of the Accused No.1 to the persons who invested therein within a period of one month from the date of the said directions. A copy of the said direction is marked as Ex.P4. However, despite the above directions by SEBI, the Accused No.1 did not comply with the said Regulations and from this, it is clear that the Accused No.1 is intentionally and with

dishonest intentions evading the repayment of the amounts collected by it from the investors. The Accused No.1 raised a total amount of nearly Rs.0.27 crores by its own admission and its failure to refund the amounts to the general public who invested their hard-earned money in the schemes operated by the Accused No.1 caused huge pecuniary damage to them. In view of the same, according to the complainant, the 1st Accused and the 2nd and 3rd Accused, being the Directors of the 1st Accused, who are in charge and responsible for the affairs of the 1st Accused for the conduct of the business, are liable for violations of the 1st Accused as per Sec.27 of Securities and Exchange Board of India Act, 1992.

25. Per contra, it is contended by the Accused that the 1st Accused is a limited company, established in the year 1994. Accused 1 and 2 are the directors of the company and Accused 2 was in charge of the company. The Accused 3 did not involve in any of the affairs of the first Accused company. The A1 company introduced three schemes of collective investment of Rs.500/, 750 and 1,000/- with an offer of providing mangium and teak wood after 2005 ten years and collected around Twenty Seven Lakhs rupees (27,00,000/-) from the public in the year 1994-1995. The 1st Accused purchased 123 acres of land at Shankanthirude, Tirunelveli District and planted around Twenty Five Thousand mangium trees and arranged bore well, drip irrigation and other facility spending more than One Crore Rupees (Rs.1,00,00,000/-) The 1st Accused also purchased 67 acres of land at Mannarkadu, Kerala state and planted teak wood. By letter dated 20/04/1998 and 11/05/1998 the complainant issued notice to the Accused requiring to furnish the details of the company and its schemes.

26. By letter dated in 22/05/1998, Accused submitted all the details to the complainant. Again by letter dated 16/10/1998, 30/09/1999, 21/10/1999 and 13/12/1999, the complainant sent circulars to the Accused. By letter dated 12/05/2000, the complainant required the Accused to comply with the Regulations 73(1) and 73(2) of the SEBI Act. Since the process of registration with SEBI is a tedious one and fees and conditions for registration are huge, the Accused being a small company find it very difficult to continue with the business. By letter dated 12/05/2000, the Accused requested the complainant to provide one year time to refund all the investors and wind up the scheme. The Accused started refunding the creditors and refunded Two Lakhs Sixty Five Thousand rupees (Rs.2,65,000/-) to the investors by the month of December 2000.

27. By letter dated 18/12/2000, the complainant compelled the Accused to refund all the investors within a period of one month from the order failing which initiation of prosecution U/s.24 of SEBI Act, 1992 which prescribes imprisonment for a term which may extend to one year, or with fine, or with both against persons in charge of the business of the scheme and to debar the Accused from operating in the Capital Market for five years and to write to the State Government and local police to register civil/criminal cases against the Accused and to write to the Department of company affairs to initiate process of winding up of the company. The 1st Accused initiated the proceeding to windup the company in the month of January 2001 in High Court of Kerala. By order dated 20/05/2001

made in CP No:27/2001, the Hon'ble High court of Kerala at Ernakulum, directed the Accused to advertise the liquidation process in the Daily newspapers and on 17/07/2001 appointed Provisional Official Liquidator. The Official Liquidator collected all the documents from the Accused in the month of September 2001 and took charge of all the properties of the Accused company.

28. The Official Liquidator floated tenders for the sale of the property in Shankarathirudu and sold the 123 acres of land at Shankarathirudu obtaining permission from the Hon'ble High Court of Kerala and advertised refund of money to the investor in the news paper's and paid dividend to the investors and keeping the balance amount in the account of CP No:27/2001.

29. According to the learned counsel for the Accused, the complainant had issued directions on 7.12.2000 by exercising power u/s 11(B) of the Act, giving one month time to comply with the directions in the said letter. Therefore, the cause of action for the complaint is on the basis that, on completion of one month time from 07/12/2000 the Accused have committed the offense by non complying with the directions. In other words the offence is completed immediately after the expiry of one month time from 07/12/2000. On the day when the direction was issued i.e., on 07/12/2000 as per the Act the punishment contemplated is imprisonment for a period of one year or with fine or with both which also indicated in the letter dated 07/12/2000. The complaint came to be filed before the Learned XXIII Metropolitan Magistrate, Saidapet on 20/12/2002 on which date the complaint was

barred by limitation. An amendment to the section 24(1) of the Act came to be notified on 29/10/2002 enhancing the punishment for the offence. On 20/12/2002 when the complaint was filed the complaint was clearly barred by limitation and the complaint came to be filed before a court which is not competent to try the case. In both grounds the complaint cannot be maintained.

30. Further, it is contended by the learned counsel for the defence that the Government has decided to implement SEBI (CIS) regulation in the year 1997 and required all the existing companies operating capital investment schemes either to register with SEBI or to return the money collected from the investors. The Accused collected money in the year 1994-1995 and has not collected any amount after 1995 and has not collected any amount after 1995. On receipt of notices from the complainant, the Accused started to refund the investors and returned Two Lakhs Sixty Seven Thousand rupees (Rs.2,67,000/-) to the investors within December 2000. Since the complainant refused to give one year time for the repayment and threatened to prosecute the Accused, the Accused started the process to wind up the company in the month of January 2001 before the Hon'ble High Court Kerala. Pursuant to the Order of the Hon'ble High Court Kerala, published the liquidation process in the Daily newspapers on 25/05/2001. By Order dated 21/07/2001 the Hon'ble High Court Kerala appointed the Provisional Liquidator to the Accused company in CP No: 27/2001. The Provisional Liquidator took Custody of the documents and properties of the Accused company as per the directions of the Hon'ble High Court Kerala and sold the property at Shankanthirudu and paid to the investors and keeping the balance

amount in the account of CP No:27/2001. The property situated in Mannarkadu, Kerala is under the custody of the Official liquidator. The SEBI Act was amended on 29th October 2002 and the Complainant filed the complaint in the month of December 2002. Thus the complainant prosecuted the company which is under liquidation from July 2001 belatedly in the month of December 2002 which is not sustainable.

31. Further, it is contended that there is no complaints from any investor. As per the terms and conditions of the collective investment scheme, the Accused planted mangium and teak wood trees. The scheme is for ten years ending in the year 2005. In spite of huge investment, the Accused started to refund the amount to the investors as per the directions issued by the complainant and finally wound up the company as directed by the complainant. The complaint did not disclose the period or place of the offence. The charge also did not specify the place or time of offence as such the charge is in proper. The 1st Accused company did not collect any amount after the SEBI Act and a Regulations came into force. The 2nd Accused complied with the complainant by submitting all the details of the first Accused company to the complainant, refunded amount to the investors as directed by the complainant and wound up the company as per law. The 3rd Accused did not involve in any of the affairs of first Accused company and violated any of the SEBI Act. The Accused did not involve in any offence as stated and violated the rules and regulation of the SEBI Act and hence liable to be acquitted.

32. The first and foremost contention of the learned counsel for the defence is that

even as per the case of the complainant, the Accused has violated or contravened the provisions of the Act and its regulations as on 7.12.2000. On the date of such contravention, the offence is punishable for one year or with fine or with both and therefore, the complaint ought to have been filed within one year as per Sec.468 of Cr.P.C. Since, the complaint was filed only on 20.10.2002, the cognizance is barred u/s 468 of Cr.P.C.

33. However, it is to be noted that it has been held in Vishnu Prakash Bajpai vs Securities And Exchange Board Of India, reported in 2010 SCC Online Delhi 588 that the offence is a continuing offence till the time the Company complies with the regulations and directions issued by SEBI, it would be liable for the period during which it was managing or controlling the affairs of the company. Since the offence punishable u/s 24 of the SEBI Act, which is a continuous one and the non-compliance thereof would throw the cause of action, this court is of the considered view that the defence taken by the learned counsel for the Accused is unsustainable. The decisions relied by the counsel for the complainant in this regard which were referred to supra also fortifies the above view of this court.

34. In this case, one Pradeep Ramakrishnan was examined before the court by the complainant as P.W.1. As per the complaint, the 1st Accused herein is running a collective investment schemes even before the regulation was brought in existence. The said fact was not denied either by the first Accused or by the second accused. The regulation was brought in existence in the year 1999. Chapter - IX and Regulation 68 of SEBI (CIS) Regulations prescribes 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 Chapter-IX. As per Clause-2 of Regulation 68, an existing collective investment scheme shall make an application to the Board in the manner specified in regulation 5. On careful perusal of the evidence projected before this court, it is found that the complainant herein on and after the commencement of the Regulations on 20th April 1998, issued Ex.P2 letter to the 1st Accused company stating that a public notice was issued on December 18, 1997 directing all the existing entities engaged in Collective Investment Schemes to file the following with their office :

- a) Terms and conditions of the scheme.
- b) Funds raised through all the schemes
- c) Promises or assurances or assured returns made in the scheme
- d) Copies of offer documents of the schemes
- 3) Names, details and background of the promoters / sponsors.

According to Ex.P2, the said information was to be filed with SEBI latest by 15th January 1998. However, the 1st Accused company has not furnished any information till date. The non-filing of information by the companies which have floated schemes in the nature of Collective Investment Schemes violates the provisions of the SEBI Act. Therefore, the 1st Accused company was directed immediately to inform the SEBI the following thing :

- 1) Has the 1st Accused company collected funds from the public by issuing instrument like Agro Bonds, Plantation Bonds etc.?
- 2) If so, why action should not be initiated against the 1st Accused company for violating provisions of the SEBI Act?

Ex.P2 enclosed the copy of the order passed under Section 11B of the SEBI Act and a copy of the public notice dated 18th December 1997. From that, it is clear that though the regulation was brought in existence in the year 1999, the 1st Accused herein has not made any application for the grant of certificate within a period of two months from such date. Regulation -5 makes it very clear that 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 the said regulations make an application to the Board for the grant of a certificate within a period of two months from such date. Only pursuant to the Ex.P2 notice, the Accused has submitted Ex.P3 particulars. Ex.P3 information was received by the SEBI on 6th May 1998. Therefore, the violation of regulations have started within 2 months from the date of publication of regulations due to the non-registration of its scheme under the Regulation-5.

28. On careful perusal of Ex.P3 letter, it is found that the 1st Accused herein has floated three schemes by name Supreme Scheme, Small Scheme and Super Scheme. As per Ex.P3, the number of persons joined in Supreme Scheme are 165, the number of persons joined in Small Scheme are 362 and the number of persons joined in Super Scheme are 1135. Thus, the 1st Accused company has collected a sum of Rs.27,06,500/- under the above three schemes.

35. Again on 11.5.1998, the complainant sent Ex.P4 letter calling upon the 1st Accused company to furnish the following details :

a) Terms and conditions of the schemes.

- b) Funds raised through all the schemes
- c) Promises or assurances or assured returns made on the scheme.
- d) Copies of offer documents of the schemes.
- e) Names, details and background of promoters / sponsors.

36. On 22.5.1998, the 1st Accused company through 2nd Accused sent Ex.P5 communication stating that they were unaware of the public notice and therefore, the delay may be condoned. Again, the complainant has sent Ex.P6 communication dated 19.6.1998, calling upon the following information / documents for their perusal :

1. Latest Audited Balance Sheet.
2. Name, Addresses and Occupation of all the directors of the company.
3. A compliance certificate from the Managing Director / Director (in the enclosed format) to the effect that the directions issued by SEBI are being complied with and the company is not raising any funds without obtaining a rating of its schemes.
4. A statement of deployment of funds mobilised under various schemes duly certified by the Auditors.

37. The 1st Accused represented through 2nd Accused has furnished certain details as called for in Ex.P6 vide Ex.P7. Not satisfied with the above details, the complainant has issued another communication vide Ex.P3 dated September 14, 1998 seeking for the following details :

1. Names and addresses of the Directors of the company.

2. Detailed break-up of the amount received from the public / investors in various schemes.
3. Detailed break-up of the assets created out of the corpus of the scheme and their location.
4. Number of investors who are members of the schemes.
5. Amount of plantation / agricultural income earned by the company during the last 3 years.
6. Paid up capital of the company as on 31.3.98.
7. Year-wise break-up of the future liabilities / obligations in terms of the promises made to the investors.
8. A statement of the amount of the repayment including returns due to the investors but not paid.
9. A statement outlining the factual progress made with regard to the plantation / scheme activities carried out by the company.

38. The 1st Accused through 2nd Accused has sent the following information :

1. We have not promised any interim returns to our investors in any of our scheme and as such no amount is due for redemption / repayment as on 31.12.1998.
2. Total Number of Investors as on dated is 10,743.
3. Since the Board of Directors of the Company have decided not to mobilise any further funds under our schemes, subsequent to the public notice issued by SEBI on 18.12.1997 the company did not obtain a rating from any one of the Credit Rating Agencies.

39. Again, on 16.10.1998, the complainant has sent Ex.P10 communication informing the order passed by the Hon'ble High Court at Delhi in CWP No.3352/98 - S.D.Battacharya & others - vs - SEBI and others. Again there were communications by the complainant dated 11.11.1998, 30.9.1999, 21.10.1999, 13.12.1999 and 29.12.1999, vide Ex.P11 to P16. However, the above communications were not responded by the 1st Accused and the 2nd Accused. Ex.P17 was replied to by the 1st Accused stating that all the amounts received by the company already invested at 125 acres of Tirunelveli Plantation and there is no liquid cash with the company to pay off to the investors. The company is making earnest effort to pay the investors and to formulate a scheme for the same. The 1st Accused company may be given one more year time, within which they expect to do something to formulate a scheme to repay the investors, otherwise they have no alternative than to wind up the company by filing the petition before the Hon'ble High Court. From that, it is clear that vide Ex.P18, the 1st Accused company through its Managing Director, the 2nd Accused makes it clear that they are not in a position to repay their investors and they sought one year time.

40. As per Regulation 73(1) of SEBI, Collective Investment Scheme Regulations, 1999, 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. In this case, the 1st Accused company has failed to make an application to the Registrar of the Board within the time and it has not been granted provisional registration by the Board. In this case, the 1st Accused company ought to have proceeded to wind up its scheme and shall send an information memorandum to the investors who have subscribed to the collective investment scheme, 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 as per Clause-2 of Regulation - 73. However, the 1st Accused has not circulated any information memorandum to its investors as required under Clause-2 of Regulation-73. Further, the complainant has issued Ex.P20 communication dated 18.10.2000 enclosing copy of the Directions from SEBI under Section 11B of the SEBI Act, 1992 read with Regulation 65 and 73 of SEBI (Collective Investment Schemes) Regulations, 1999 for its compliance. The said directions u/s 11(B) is marked as Ex.P21. Even thereafter, the 1st Accused company through 2nd Accused did not send any information memorandum to its investors on or before 20.2.2000. Therefore, it is clear that the 1st Accused and the 2nd Accused has acted in contravention of Regulations framed under the SEBI Act.

41. On the other hand, it is contended by the learned counsel for the Accused that since the complainant has not given one year time as requested by the 1st Accused company, it approached the Hon'ble High Court, Kerala for winding up of its business. The Hon'ble High Court of Kerala has wound up the company by order dated 19.7.2001 and D.W.1 was

appointed as Provisional Liquidator for A1 company. D.W.1 has marked Ex.D1, the copy of the appointment of Provisional Liquidator in O.P.No.2/20001 by the Hon'ble High Court, Kerala at Ernakulam, dated 19.7.2001. In D.W.1 cross, the Accused have marked Ex.D1, the letter of D.W.1 Official Liquidator to the 2nd Accused in respect of details of the payment made to the creditors of the company. From that, it is clear that the payments were made only by the Official Liquidator after he was appointed by the Hon'ble High Court as stated above. The particulars makes it clear that it is only the 1st dividend paid to the creditors and they were not settled. Further, the defence has marked Ex.P3, the communication sent by Official Liquidator to the 2nd Accused enclosing the order of the Hon'ble High Court dated 19.7.2001. Ex.D4 is the communication made by the Official Liquidator to the 2nd Accused informing the fact that a sum of Rs.2,01,000/- was refunded to the investors prior to the date of winding up and a sum of Rs.16,15,095/- was declared as dividend to the creditors / investors and after making payment of a sum of Rs.2,62,068/- as on 30.11.2010 is available in the account of the company. The property at Tirunelveli has been sold for Rs.19,00,000/- However, the property at Mannargh, Kerala has not been sold.

42. Further, the defence has marked Ex.D5 communication by the Official Liquidator to the 2nd Accused stating that the office of the Official Liquidator sent dividend notices to all the claimants / depositors. A total number of 925 creditors returned the said notices affixing their signatures within the time limit. A sum of Rs.6,50,656/- have been paid to all the claimants on various dates during the period till 2.8.2010. The unpaid balance amount of Rs.9,64,530/- after the time fixed have been transferred into the Companies

Liquidation Account maintained by the Registrar of Companies, Kerala. The depositors / creditors who have not accepted the amount have liberty to approach the Registrar of Companies, Kerala for obtaining their amount at any time. This letter communication also makes it very clear that the Accused company has not settled all its creditors. Ex.D6 is nothing but Ex.D1 marked through P.W.1 in cross. Therefore, the submission of the learned counsel for the defence that the Accused should have settled its depositors had the SEBI been given one year time, is found to be not true.

43. Further, the learned counsel for the defence contended that the complaint was lodged only on 3.12.2002 and on that date, the 1st Accused company was under liquidation and therefore, the complaint is not maintainable. No doubt, the 1st Accused company being a corporate entity a juristic person, cannot act its own. But, its interest can be represented by its representatives. In this case, the Official Liquidator was appointed by the Hon'ble High Court of Kerala. Though the 2nd Accused has knowledge about the same, he has not taken any steps to issue notice to the Official Liquidator appointed by the Hon'ble High Court, Kerala to represent the interest of the 1st Accused company. Therefore, now it cannot be contended that the complaint was lodged against the company under liquidation and therefore it is not maintainable. Further, on careful perusal of the complaint, it is found that the 2nd Accused has represented the company and signed for and on behalf of the 1st Accused company in the charges also. Apart from that, during Sec.313(1)(b) Cr.P.C. examination also, the 2nd Accused has represented the 1st Accused. Therefore, the 2nd Accused is precluded from contending that the company was under liquidation and

therefore, the complaint is not maintainable.

44. The next contention of the learned counsel for the defence is that the 3rd Accused is only a Director and he was not responsible for the day to day affairs of the company and therefore, he cannot be mulcted with criminal liability even u/s 27 of the SEBI Act. Proviso to Section 27 places burden upon the person in charge of the day to day affairs of the company to show that the contravention was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence. Further, on careful perusal of Sec.27, Sub-Sec.2, it is made clear that where an contravention under this Act has been committed by a company and it is proved that the contravention has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly. Sec.27 of the Act imposes vicarious liability on the Directors on proof of the fact that the contravention has been committed with the consent or of, or is attributable to any neglect on the part of Director. Therefore, merely because one person is Director, he cannot be mulcted with vicarious liability. On careful perusal of the complaint filed by the SEBI, it is found that at Paragraph-18, it is alleged that the Accused Accused No.2 and 3 are the Directors of the Accused No.1 and as such persons in charge of and responsible to the Accused No.1 for the conduct of its business and are liable for the violations of the Accused No.1 as provided under Sec.27 of Securities and Exchange Board of India Act, 1992. What is averred in the complaint is

nothing but mere reproduction of Sec.27 of the Act. The Hon'ble Apex Court while dealing with liability of the directors in Section 141 of the Negotiable Instruments Act which is pari materia to Section 27 of the SEBI Act in *S.M.S.Pharmaceuticals Ltd. -vs- Neeta Bhalla and another*, reported in (2007) 4 Supreme Court Cases 70, held as under :

"Requirements of law for proceeding against the Directors of the Company for their purported constructive liability came up for consideration in this case before a Division Bench of this Court, wherein the following questions were posed:

- (a) Whether for purposes of Section 141 of the Negotiable Instruments Act, 1881, it is sufficient if the substance of the allegation read as a whole fulfil the requirements of the said section and it is not necessary to specifically state in the complaint that the person Accused was in charge of, or responsible for, the conduct of the business of the company.
- (b) Whether a director of a company would be deemed to be in charge of, and responsible to, the company for conduct of the business of the company and, therefore, deemed to be guilty of the offence unless he proves to the contrary.
- (c) Even if it is held that specific averments are necessary, whether in the absence of such averments the signatory of the cheque and or the managing directors or joint managing director who admittedly would be in charge of the company and responsible to the company for conduct of its business could be proceeded against."

Having regard to the importance of the questions, the matter was referred to a 3-Judge Bench of this Court. Upon noticing the rival contentions of the parties as also the precedents operating in the field, the questions were answered by the larger bench in

the following terms:

"19. In view of the above discussion, our answers to the questions posed in the reference are as under:

(a) It is necessary to specifically aver in a complaint under Section 141 that at the time the offence was committed, the person Accused was in charge of, and responsible for the conduct of business of the company. This averment is an essential requirement of Section 141 and has to be made in a complaint. Without this averment being made in a complaint, the requirements of Section 141 cannot be said to be satisfied.

(b) The answer to the question posed in sub-para (b) has to be in the negative. Merely being a director of a company is not sufficient to make the person liable under Section 141 of the Act. A director in a company cannot be deemed to be in charge of and responsible to the company for the conduct of its business. The requirement of Section 141 is that the person sought to be made liable should be in charge of and responsible for the conduct of the business of the company at the relevant time. This has to be averred as a fact as there is no deemed liability of a director in such cases.

(c) The answer to Question (c) has to be in the affirmative. The question notes that the managing director or joint managing director would be admittedly in charge of the company and responsible to the company for the conduct of its business. When that is so, holders of such positions in a company become liable under Section 141 of the Act. By virtue of the office they hold as managing director or joint managing director, these persons are in charge of and responsible for the conduct of business of the company. Therefore, they get covered under Section 141. So far as the signatory of a

cheque which is dishonoured is concerned, he is clearly responsible for the incriminating act and will be covered under sub- section (2) of Section 141."

45. Apart from that, the Hon'ble Apex Court in (2018) 7 Supreme Court Cases 443, held as under :

"In Pooja Ravinder Devidasani v. State of Maharashtra (2014) 16 SCC 1 at 9, it is stated:

"17. There is no dispute that the appellant, who was wife of the Managing Director, was appointed as a Director of the Company— M/s Elite International (P) Ltd. on 1-7-2004 and had also executed a letter of guarantee on 19-1-2005. The cheques in question were issued during April 2008 to September 2008. So far as the dishonour of cheques is concerned, admittedly the cheques were not signed by the appellant. There is also no dispute that the appellant was not the Managing Director but only a non-executive Director of the Company. Non-executive Director is no doubt a custodian of the governance of the company but is not involved in the day-to-day affairs of the running of its business and only monitors the executive activity. To fasten vicarious liability under Section 141 of the Act on a person, at the material time that person shall have been at the helm of affairs of the company, one who actively looks after the day-to-day activities of the company and is particularly responsible for the conduct of its business. Simply because a person is a Director of a company, does not make him liable under the N.I. Act. Every person connected with the Company will not fall into the ambit of the provision. Time and again, it has been asserted by this Court that

only those persons who were in charge of and responsible for the conduct of the business of the Company at the time of commission of an offence will be liable for criminal action. A Director, who was not in charge of and was not responsible for the conduct of the business of the Company at the relevant time, will not be liable for an offence under Section 141 of the NI Act. In National Small Industries Corpn. (National Small Industries Corpn. Ltd. V. Harmeet Singh Paintal (2010) 3 SCC 330 : (2010) 1 SCC (Civ) 677 : (2010) 2 SCC (Cri) 1113] this Court observed: (SCC p. 336, paras 13-14) “13. Section 141 is a penal provision creating vicarious liability, and which, as per settled law, must be strictly construed. It is therefore, not sufficient to make a bald cursory statement in a complaint that the Director (arrayed as an Accused) is in charge of and responsible to the company for the conduct of the business of the company without anything more as to the role of the Director. But the complaint should spell out as to how and in what manner Respondent 1 was in charge of or was responsible to the Accused Company for the conduct of its business. This is in consonance with strict interpretation of penal statutes, especially, where such statutes create vicarious liability.

14. A company may have a number of Directors and to make any or all the Directors as Accused in a complaint merely on the basis of a statement that they are in charge of and responsible for the conduct of the business of the company without anything more is not a sufficient or adequate fulfilment of the requirements under Section 141.” Non-executive directors are, therefore, persons who are not involved in the day to day affairs of the running of the company and are not in charge of and not responsible for

the conduct of the business of the company.

46. From the above authoritative pronouncements, it is clear that mere reproduction of the allegations referred to in the provisions does not help the prosecution to prove the guilt of the Accused. It should be proved by the complainant that the said Director is involved and is responsible for the affairs of the company at the relevant point of time. It is not denied by the 3rd Accused that she is not the Director at the relevant point of time. But, she is contending that she has not actually involved in the affairs of the company.

47. On careful perusal of the evidence of P.W.1, in his evidence, he has not whispered anything about the involvement of the 3rd Accused. On careful perusal of the documents projected on the side of the complainant, none of the documents, the name of the 3rd Accused Jolly Jose found place. Ex.P3 letter addressed to the complainant for and on behalf of the 1st Accused is signed by the 2nd Accused. Further, the lease agreement in respect of Sankanthirudu Village was executed by its Managing Director Jose Mathew and the 3rd Accused has not signed not even a witness. Likewise, another lease agreement dated 1st June, 1995 was also entered into between one T.C.Shibu and the 1st Accused represented by 2nd Accused. The third agreement dated 1st June, 1995 was executed between third Accused and 1st Accused represented by 2nd Accused. The certificates were issued by the Managing Director. Ex.P5 letter addressed to SEBI was also written by 1st Accused through 2nd Accused. Ex.P9 is also a letter addressed to SEBI by the 1st Accused through 2nd Accused. Ex.P18 letter was also addressed by the 1st Accused through 2nd Accused. None of the documents filed by the prosecution establishes the fact that the 3rd Accused is also actively involved in the affairs of the 1st Accused company. Therefore, this court is of the considered

view that the prosecution has miserably failed to prove that the 3rd Accused is vicariously liable for the contravention of the 1st Accused. Hence, the 3rd Accused is acquitted from the charges levelled against her.

48. However, as stated supra, the complainant has projected voluminous documentary evidence to show that the 2nd Accused herein has represented the 1st Accused all along and he was in charge and responsible for the conduct of the 1st Accused company. Therefore, as per Sec.27 of SEBI Act, by deeming notion, the 2nd Accused is vicariously liable for the act done by the 1st Accused company.

49. In the result, this court is of the considered view that the complainant has proved the charges levelled against the Accused 1 and 2 for the offences punishable u/s 24(1) of SEBI Act r/w Sec.27 of SEBI Act beyond all reasonable doubt and therefore, they are convicted for the above said offence. The prosecution has failed to prove the charges against the 3rd Accused and therefore, 3rd Accused is acquitted from the charges punishable under Section 24(1) of SEBI Act r/w Sec.27 of SEBI Act. The respective conviction and acquittal is recorded under Section 235 (2) Cr.P.C.

Dictated to the stenographer typed by him directly, corrected and pronounced by me in the Open Court this, the 21st day of November, 2024.

**S
KARTHIKEYAN**

Principal Sessions Judge, Chennai.

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50. After recording the conviction for the offence punishable u/s 24(1) of SEBI Act r/w Sec.27 of SEBI Act, this court has questioned the 2nd Accused on the sentence to be imposed on the 1st Accused company for which the second Accused has answered as follows :

“He has not committed any offence knowingly and he may be pardoned.”

This court has questioned the 2nd accused on the sentence to be imposed on him for the offence punishable u/s 24(1) of SEBI Act r/w Sec.27 of SEBI Act, for which the 2nd Accused has answered as follows :

“He has not committed any offence knowingly and he may be pardoned.”

51. Mr.Swapnil Jain, the Assistant General Manager, SEBI, Chennai Office is present today. The learned counsel for the complainant is not present. The complainant was questioned about the sentence to be imposed on the accused. The complainant has submitted that the depositors / investors have suffered huge loss on account of the scheme floated by the 1st Accused company, run by the 2nd Accused. Therefore, maximum sentence is to be imposed on the Accused for having committed the offence u/s 24(4) of SEBI Act r/w 27 of SEBI Act willfully.

52. The learned counsel for the defence submitted that there is no complaint from any of the depositors. The company has not floated any scheme subsequent to the coming into force of the Regulations. Even before winding up proceedings is started, the accused has settled partly to the tune of Rs.2,57,000/- Since the company is not able to comply with the directions issued by the SEBI, it has gone to the process of winding up and the company's

assets were under liquidation. Therefore, the learned counsel for the defence sought for minimum punishment and prayed for sentence of fine only may be imposed.

53. This court has given its thoughtful consideration to the submissions made by either side. On careful perusal of the records, it is found that though the Regulations were coming into force in the year 1999 itself, as per the Regulation, the 1st Accused company, which is running a Collective Investment Scheme, has failed to register under the Regulation within two months from the date of Regulation. Though the SEBI issued notices and called for various particulars, the 1st Accused company, represented through the 2nd Accused has not complied with those directions and dilly dallying the compliances. The first Accused company run by the 2nd Accused and the 2nd Accused being the managing director of the 1st Accused company have failed to settle the depositors even after their request for one year time was turned down by the SEBI. Only thereafter, the 1st Accused company, run by the 2nd Accused in stead of winding up of the schemes it flouted, has gone for winding up of company in order to delay the payment to depositors. The records reveals that the depositors were not settled fully and they were paid some part amount and some dividend from the assets liquidated by the Official Liquidator under the order of the Hon'ble High Court of Kerala. Therefore, this court is of the considered view that the 1st Accused, being the company, who has collected a sum of Rs.0.27 Crores, has neither registered its collective investment scheme nor settled the depositors as per the regulation and thereby committed the offence u/s 24(1) of SEBI Act, is to be imposed a fine of Rs.10 lakhs. The 2nd Accused, being the Managing Director of the 1st Accused company, has contravened Sec.24(1) of SEBI Act, in the considered view of this court, is liable to be punished with sentence of 3

years Simple imprisonment with fine of Rs.5 lakhs.

54. Accordingly, this court found the 1st Accused company guilty for the offence punishable u/s 24(1) of SEBI Act r/w Section 27 of SEBI Act and imposed a fine of Rs.10 lakhs and this court found the 2nd Accused guilty for the offence punishable u/s 24(1) of SEBI Act r/w Section 27 of SEBI Act and sentenced him to undergo 3 years simple imprisonment and to pay a fine of Rs.5 lakhs, in default, to undergo 1 year simple imprisonment. The 3rd Accused is acquitted of the offence punishable u/s 24(1) of SEBI Act r/w Section 27 of SEBI Act.

Dictated to the stenographer typed by him directly, corrected and pronounced by me in the Open Court this, the 21st day of November, 2024.

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KARTHIKEYAN
Principal Sessions Judge, Chennai.

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List of prosecution side witnesses:-

P.W.1 - Thiru.Pradeep Ramakrishnan

List of prosecution side Exhibits:-

Exhibit No.	Date	Description of Document
Ex.P1	21.5.2001	Letter of Authority
Ex.P2	20.4.1998	Letter from SEBI to the 1st accused company.
Ex.P3	--	Letter from 1st accused company to SEBI.
Ex.P4	11.5.1998	Letter from SEBI to the 1st accused company.
Ex.P5	22.5.1998	Letter from 1st accused company to SEBI.
Ex.P6	19.6.1998	Letter from SEBI to the 1st accused company.
Ex.P7	18.8.1998	Letter from SEBI to the 1st accused company.
Ex.P8	14.9.1998	Letter from SEBI to the 1st accused company.

Ex.P9	10.9.1998	Letter from 1st accused company to SEBI.
Ex.P10	16.10.1998	Letter from SEBI to the 1st accused company.
Ex.P11	11.11.1998	Letter from SEBI to the 1st accused company.
Ex.P12	30.9.1999	Letter from SEBI to the 1st accused company.
Ex.P13	21.10.1999	Letter from SEBI to the 1st accused company.
Ex.P14	13.12.1999	Letter from SEBI to the 1st accused company.
Ex.P15	29.12.1999	Letter from SEBI to the 1st accused company.
Ex.P16	--	Acknowledgment card.
Ex.P17	12.5.2000	Letter from SEBI to the 1st accused company.
Ex.P18	3.6.2000	Letter from 1st accused to SEBI.
Ex.P19	31.7.2000	Letter from SEBI to 1st accused company.
Ex.P20	18.12.2000	Letter from SEBI to 1st accused company.
Ex.P21	--	Direction u/s 11B of the SEBI Act, 1992 r/w Regulations 65 & 73 of SEBI (Collective Investment Schemes) Regulations, 1999.

List of Material Objects:-

-Nil-

List of Defence side witness and Material Objects :-

D.W.1 Thiru.V.M.Prasanth

D.W.2 Thiru.Jose Mathew.

List of Defence side documents :-

Exhibit No.	Date	Description of Document
Ex.D1	29.12.2011	Letter from Official Liquidator to 2nd accused.
Ex.D2	19.7.2001	Order of the Hon'ble High Court, Kerala in C.P.No.27/2001.
Ex.D3	26.12.2003	Letter from the Official Liquidator to 2nd accused.
Ex.D4	6.12.2010	Letter from the Official Liquidator to 2nd accused.
Ex.D5	28.11.2011	Letter from the Official Liquidator to 2nd accused.
Ex.D6	29.12.2011	Letter from the Official Liquidator to 2nd accused.
Ex.D7	15.6.2001	Paper Publication.

Ex.D8	--	Paper Publication.
Ex.D9	28.7.2022	Letter from accused to SEBI through advocate.
Ex.D10	--	Acknowledgment card.

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 Principal Sessions Judge,
 Chennai.

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