

IN THE COURT OF PRINCIPAL SESSIONS JUDGE, CHENNAI

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

Principal Sessions Judge.

Thursday, the 28th day of November, 2024.

Sessions Case No: 135 / 2011

**(C.C.No.8803 / 2002 on the file of the learned XXIII Metropolitan Magistrate,
Saidapet, Chennai-18)**

1. Name of the Accused	:	1. P.G.Fortune Agritech Ltd., a company incorporated under the provisions of Companies Act, 1956 and having its registered office at 301, Eswar Homes, Dwaraka Nagar, First Lane, Visakhapatnam. 2. Shri.VVLP Gupta, Director / Officer in charge of Accused No.1. No.301, Eswar Homes, Dwaraka Nagar, First Lane, Visakhapatnam 3. Shri.T.Upendra Reddy, Director/Officer in charge of Accused 1, D.No.2-1, Duppalapoodi, Anaparthi-533342. 4. Shri.KSPN Varma, Director/Officer in charge of the Accused No.1, Opp.Telephone Exchange, Harita Hospitals, Palakollu-534260. 5. Shri.K.G.Krishnan Raju, Director/Officer in charge of A1 No.27-19-3, A.S.R.Nagar, Bhimavaram-534202.
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'Monte Buildings, 3 rd Floor, 32, D'Monte 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	:	Accused 1, 3 to 5 are found not guilty for the offences punishable u/s 24(1) of SEBI Act r/w 27 of SEBI Act.
6. Sentence or Order	:	The Accused 1, 3 to 5 are found not guilty of the offences punishable u/s 24(1) of SEBI Act r/w 27 of SEBI Act and they are acquitted from the said charged. The said acquittal is recorded u/s 235(1) of Cr.P.C. Pending Trial, the Accused 2 died and therefore, the charges against him got abated.

		(i) The Accused were not arrested. No bail bond was executed. (ii) No material object was recovered and marked before this court and therefore, no property order is passed.
8. Counsel for the complainant	:	M/s.N.P.Kumar, Special Public Prosecutor.
9. Accused defended by	:	M/s.L.Rajasekar and S.Kamaraj, Counsel for the Accused.

This case came up on 05.11.2024 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.L.Rajasekar and S.Kamaraj, 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.8803/2002.

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. Pending trial before the learned XXIII Metropolitan Magistrate, Saidapet, Chennai, A2 died. The case was not proceeded with due to the pendency of N.B.W. as against the Accused and on 14.02.2011, the learned XXIII Metropolitan Magistrate has found that the occurrence was happened after the amendment made in SEBI Act and 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.135/2011. On appearance of the Accused, charges were framed on 25.7.2011 for the offences punishable 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.

5. On 25.7.2022, one Mr.Pradeep Ramakrishnan was examined as P.W.1 on the side of the complainant. The chief examination of the said P.W.1 was continued on 02.09.2022, 24.11.2023 and 21.12.2023. Thereafter, he was cross-examined on 14.06.2024, 05.06.2024. Through P.W.1, Ex.P1 to P33 were marked. With the evidence of P.W.1, the complainant has closed its evidence. 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, no witness was examined.

6. Both sides filed written submissions and they were taken on record. On 05.11.2024, oral submissions of both side heard. 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 :

1. The Complainant herein is working as Asst. Gene Manager with Securities and Exchange Board of India (hereinafter referred to as "SEBI) and is duly authorised to file this Complaint, The letter of authority dated May 21, 2001 was issued by SEBI authorizing the complainant to file complaints on behalf of it. SEBI was established under the Securities and Exchange Board of India Act. 1992 for providing protection of the interests of investors in securities and to promote the development of and to regulate the securities markets and for matters connected therewith or incidental thereto.

2. Section 11 (1) of Act casts upon SEBI the duty to protect the interests of investors in securities and to promote the development of and to regulate the securities market through appropriate measures, These measures provide for -

- a) Regulating the business in stock exchanges and any other securities market.
- 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 market in any manner.
- c) registering and regulating the working of collective Investment schemes, including mutual funds.
- d) promoting organizations, and regulating self-regulatory

- e) prohibiting fraudulent and unfair trade practices in securities market.
- f) promoting investor education and training of intermediaries in securities market.
- 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 enquiries and audits of the stock exchanges and intermediaries and self-regulatory organizations in the securities market,
- j) performing such functions and exercising such powers under the provisions of the capital issues (Control) Act, 1947.. (Subsequently repealed) and the Securities Contracts (Regulations) Act. 1956, as may be delegated to it by the Central Government.
- k) levying fees or other charges for carrying out the purposes of Section 11 of the Act.
- l) conducting research for the above purpose,
- m) performing such other functions as may be prescribed by the government.

3. The last decade has 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. The initial success in mobilizing funds by some of these companies lead to a mushrooming of such schemes throughout the country.

4. 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 16, 1997, conveying that such schemes should be treated or 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.

5. SEBI in the year 1999 notified regulations for the regulation of the activities of collective investment schemes, filled as Securities and Exchange Board of India (Collective Investment Schemes) Regulations, 1999. (Hereinafter referred to as 'CIS Regulations' or 'the said regulations').

6. The Accused No.1 is operating collective investment schemes, and raised an aggregate amount of nearly Rs. 0.33 Crores from the general public.

7. The Accused No. I 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.

8. In terms of Chapter IX of the said regulations, any person who had been operating a collective Investment schemes of 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.

9. 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.

10. 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.

11. 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.

12. It is submitted that in terms of Reg.73 (1) of the said regulations, an 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 Reg.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 Reg.73.

13. 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 (18) 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 said regulations.

14. On December 7, 2000 SEBI by exercising its power conferred upon it under Sec.11B of Security and Exchange Board of India Act, 1992 directed 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.

15. However, despite the above directions by SEBI, and also 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.

16. The Accused No.1 raised a total amount of nearly Rs. 0.33 Crore 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.

17. In view of the above, it is charged that the Accused No.1 has committed the violation of Sec. 12 (18) 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 Sec.24 (1) of Securities and Exchange Board of India Act, 1992.

18. The Accused No.2 to 5 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.

19. The violation of the aforesaid laws by the Accused were the acts of omission and were occurred within the jurisdiction of this Honourable Court and as such this Honorable Court has got jurisdiction to try and punish the Accused.

9. In order to prove the said complaint, the complainant has examined P.W.1 on his side and exhibited Ex.P1 to P33.

10. 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 :

I. Facts of the case in brief:

- 1) The above complaint has been filed by the Securities and Exchange Board of India under Section 24(1) of the Securities and Exchange Board of India Act, 1992 against the 1st Accused company namely, P.G. Fortune Agritech Limited and the second to fourth Accused persons being the Directors of the 1st Accused company.
- 2) The Complainant/SEBI is a statutory regulatory body established under the SEBI Act for the following purposes namely:
 - a. to protect the interest of investors in securities;
 - b. to promote the development of the securities market;
 - c. to regulate the securities market; and

d. to provide for matters connected with, or incidental to the aforesaid purposes.

- 3) It is further submitted that Section 11(1) of the SEBI Act casts duty upon the SEBI to protect the interests of investors in securities market and to promote the development of and to regulate the securities market through appropriate measures. These measures referred to in section 11(1) of the SEBI Act include the registering and regulating the working inter alia of collective investment schemes in terms of clause (c) of section 11(2) of SEBI Act.
- 4) The need for such regulation arose because 1990s and thereafter had witnessed increased activity by private entrepreneurs to undertake plantation activities on a commercial scale and for the said purpose raised huge public finances. 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 without any regulatory mechanism to control the collection process or the end use of the funds garnered. 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 from the general public. The initial success in mobilizing funds by some of these companies lead to a mushrooming of such schemes throughout the country. Thereafter, the investors were neither paid the promised returns nor the very principal amount. This lead to great economic concerns since the investors were allured by high returns, had invested their savings

in such schemes. In many instances the promoters and the companies disappeared, leaving the investors in the lurch. The Government of India, after detailed consultation with the regulatory bodies, decided that an appropriate regulatory framework for regulating entities, which issue instruments like Teak Bonds, Plantation Bonds etc., has to be put in place.

- 5) Section 12 (1B) of the SEBI Act was incorporated in the SEBI Act w.e.f. 25.01.1995 which stated that 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.

- 6) A press release was issued by the Government on 18.11.1997, conveying that such schemes should be treated as Collective Investment Schemes coming under 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, the Complainant was asked to formulate the Regulations for them. Accordingly, in exercise of powers conferred under Section 30 of the SEBI Act read with Sections 11 and 19 thereof, SEBI, in the year 1999 notified the regulations for regulating the activities of CIS, titled as Securities and Exchange Board of India (Collective Investment Schemes) Regulations, 1999

- 7) The said Regulations came into force with effect from 15.10.1999. The term CIS is defined under the CIS Regulations and **Section 11AA** of the SEBI Act as follows:

“(1) Any scheme or arrangement which satisfies the conditions referred to in subsection (2) or sub-section 2A shall be a collective investment scheme.

(2) Any scheme or arrangement made or offered by any company under which,-

(i) the contributions, or payments made by the investors, by whatever name called, are pooled and utilized solely for the purposes of the scheme or arrangement;

(ii) the contributions or payments are made to such scheme or arrangement by the investors with a view to receive profits, income, produce or property, whether movable or immovable from such scheme or arrangement;

(iii) the property, contribution or investment forming part of scheme or arrangement, whether identifiable or not, is managed on behalf of the investors;

(iv) the investors do not have day to day control over the management and operation of the scheme or arrangement.”

(2A) Any scheme or arrangement made or offered by any person satisfying the conditions as may be specified in accordance with the regulations made under this Act.”

8) Regulations **3 and 4 of the CIS Regulations** provide as follows:

“3. No person other than a Collective Investment Management Company which has obtained a certificate under these regulations shall carry on or sponsor or launch a collective investment scheme.

4. Any person proposing to carry any activity as a Collective Investment Management Company on or after the commencement of these regulations shall make an application to the Board for the grant of registration.”

9) A reading of the above provisions of the SEBI Act and the CIS Regulations make it clear that a certificate of registration from SEBI is to be mandatorily obtained if any entity is desirous to launch and operate a CIS.

10) The Chapter IX of the CIS Regulations deals with existing collective investment schemes. Regulation 68 thereunder provides that any person who has been operating a CIS at the time of commencement of the CIS Regulations shall be deemed to be an existing collective investment scheme and shall comply with the provisions of the said Chapter IX of the CIS Regulations *inter alia* by way of application to SEBI for grant of registration to act as a CIS. The last date for filing any application seeking registration was 14.12.1999, however, having regard to the interest of investors and requests received from various persons operating such existing collective investment schemes, SEBI extended the last date of submitting the application by existing entities up to **31.03.2000**, and the same was declared vide a press release and a public notice.

11) Regulation 73 of the CIS Regulations mandates that an existing collective investment scheme shall be wound up: (i) if it has failed to make an application for registration to SEBI; or (ii) has not been granted provisional registration by SEBI; or (iii) having obtained provisional registration fails to comply with the provisions of regulation 71.

Further, the following process has been mandated therein:

- a. the existing Collective Investment Scheme to be wound up under sub-regulation (1) of regulation 73 shall send an information memorandum to the investors who have subscribed to the collective investment schemes, 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.
- b. The information memorandum shall be dated and signed by all the directors.
- c. SEBI is empowered to specify such other disclosures to be made in the information memorandum as it deems fit.
- d. The information memorandum shall be sent to the investors within one week from the date of the information memorandum.

- e. The information memorandum shall explicitly state that investors desirous of continuing with the collective investment scheme shall have to give a positive consent within one month from the date of the information memorandum to continue with the collective investment scheme.
- f. The investors who give positive consent shall continue with the collective investment scheme at their risk and responsibility.
- g. If the positive consent to continue is received from only 25% or less of the total number of existing investors, the collective investment scheme shall be wound up.
- h. The payment to investors shall be made within three months from the date of the information memorandum.
- i. On completion of the winding up, the existing collective investment scheme shall file reports with SEBI as may be specified.

12) Regulation 65 of the CIS Regulations provides that SEBI may also initiate criminal prosecution under Section 24 of the SEBI Act. SEBI has to administer the provisions of the CIS Regulations including the provisions of Chapter IX dealing with existing collective investment schemes and take necessary action against non-compliant

companies and their directors in accordance with law.

- 13) The 1st Accused in the instant case is the company and second to fourth Accused are the Directors of the 1st Accused Company and business is being carried on in the name of P.G. Fortune Agritech Limited. The Company was incorporated under the Companies Act, 1956 and is operating a CIS for which it has raised an amount of Rs.0.33 Crores from the general public. The company is subjected to Regulations under the CIS Regulations, 1999.
- 14) The Complainant by way of public notice dated 10.12.1999 and vide letters dated 15.12.1999 and 29.12.1999 directed the 1st Accused company 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.
- 15) The Complainant states that the 1st Accused Company had neither applied for the registration nor took steps for winding up of the schemes and repayment to the investors as mandated under the CIS Regulations and as such had attracted the provisions of Section 12(1B) of the SEBI Act, Regulations 3, 5(1) read with Regulation 68, 73 and 74 of the said CIS Regulations. The other Accused persons i.e. A2 to A5, being the directors of the said 1st Accused company are liable, in terms of section 27 of the SEBI Act, for the aforesaid violations by the said company.

16) On 07.12.2000 the Complainant by exercising the powers conferred under Section 11B of the SEBI Act directed the Company to refund the money collected by them under the aforesaid Collective Investment Scheme to the persons who invested thereon within a period of one month from the date of the said Directions. The aforesaid directions were communicated to the 1st Accused Company vide letter dated 18.12.2000. It is submitted that despite repeated directions by the Complainant, the Accused did not comply of the said directions which goes to show that the Accused are purposely with dishonest intentions are evading the repayment of the amounts collected by it from the investors.

II. Legal provisions violated by the Accused:

17) 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. The directors of the Accused no.1 company, are jointly and severally liable, under section 27 of the SEBI Act, for the default and contravention of law.

18) It is pertinent to mention that the Complainant has provided enough supporting documents to prove the offences committed by the petitioners who are directly held liable for its business affairs. It is the requirement of the said company to register its CIS with this Complainant under the CIS Regulations and non-registration of same

would make the said scheme disregard of Regulations and the same has to be wound up by returning back the money collected from investors and failure to do so will empower the Complainant to take action against the company and its directors (Accused No. 2-4) who are responsible for the operations of the Company and thus, are liable under section 27 of the SEBI Act.

III. Evidences / documents before the Hon'ble Court:

A. Evidence led by Prosecution

19) In order to prove the case beyond reasonable doubt, the complainant examined Mr. Pradeep Ramakrishnan as its witness. Exhibits Nos. 1 to 33 were marked through Prosecution Witness 1 (PW1) viz. Mr. Pradeep Ramakrishnan and details of the same are provided as under:

- a. The Notification issued by the Central Government in November 1997 is filed and marked as **Exhibit P2**.
- b. The Public Notices issued by the complainant are filed and marked as **Exhibits P3 and P4**.
- c. A letter dated 29.01.1998 from the 1st Accused Company to the complainant providing certain information with respect to its schemes is filed and marked as **Exhibit P5**.

- d. A letter dated 28.04.1998 from the 1st Accused Company in response to the complainant's letter dated 15.04.1998 providing additional information is filed and marked as **Exhibit P6**.
- e. A letter dated 28.09.1998 from the 1st Accused Company in response to the complainant's letter dated 15.09.1998 providing the company's audited balance sheet is filed and marked as **Exhibit P7**.
- f. Public Notice issued by the complainant publishing details of CIS from whom the complainant received information is filed and marked as **Exhibit P8**.
- g. A letter dated 05.11.1998 from the 1st Accused Company to the complainant is filed and marked as **Exhibit P9**.
- h. A letter dated 27.09.1999 from the complainant to the 1st Accused Company advising them to furnish information strictly as per the format enclosed therein is filed and marked as **Exhibit P10**.
- i. A letter dated 21.10.1999 from the complainant to the 1st Accused Company informing them about the notification of the CIS Regulations is filed and marked as **Exhibit P11**.

- j. Public Notice issued by the complainant dated 10.12.1999 calling upon existing CIS to comply with the provisions of CIS Regulations failing which penal actions will be initiated is filed and marked as **Exhibit P12**.
- k. A letter dated 12.05.2000 from the complainant to the 1st Accused Company noting that it had not applied for registration by 31.03.2000 and also failed to take steps for winding up of the schemes (s) in terms of the CIS Regulations and therefore, called upon to show cause why actions should not be initiated against the 1st Accused Company is filed and marked as **Exhibit P13**.
- l. A letter dated 24.05.2000 from the 1st Accused Company to the complainant forwarding a copies of Board Resolution dated 08.02.2000 and 29.02.2000 along with copy of the Information Memorandum issued by the 1st Accused Company to its investors. Vide the said letter, the 1st Accused Company also informed the Complainant that it has started repaying its investors by way of registering land. The said letter is filed and marked as **Exhibit P14**.
- m. A letter dated 05.07.2000 from ICRA Limited, a credit rating agency to the 1st Accused Company intimating them that since their CIS has not been registered and therefore, not eligible to carry out further operations the credit rating assigned to the CIS programme has been withdrawn. The said letter is filed and

marked as **Exhibit P15**.

- n. A letter dated 31.07.2000 from the complainant to the 1st Accused Company reminding them about the requirement of filing a Winding Up and Repayment Report, and informing that the said Report shall be maintained for a minimum period of 5 years from the date of the Information Memorandum. The said letter is filed and marked as **Exhibit P16**.

- o. A letter dated 18.12.2000 from the complainant to the 1st Accused Company enclosing a copy of the directions dated 07.12.2000 issued by the complainant under Section 11B of the SEBI Act is filed and marked as **Exhibit P17**. The Complainant directed the Accused persons to refund the money collected under the schemes with returns due to the investors within a period of one month, failing which the Complainant may take any or all of the following actions;
 - i. launch prosecution under section 24, SEBI Act, 1992,
 - ii. debar promoter/directors/managers/persons in charge of the business from the capital market for a period of 5 years, and
 - iii. write to state government/local police to register civil/criminal case and/or to Department of Company affairs to initiate the process of winding of the

company.

- p. A letter dated 02.07.2001 from the complainant to the Accused Company is filed and marked as **Exhibit P18.**
- q. A letter dated 10.07.2001 from the complainant to the Accused Company enclosing a directions issued by the Complainant for failure to comply with the directions issued by SEBI vide its order dated 07.12.2000 is filed and marked as **Exhibit P19.**
- r. A letter dated 09.08.2005 from the 1st Accused Company to the complainant enclosing a report titled the Winding Up and Repayment Report along with the Auditors Certificate is filed and marked as **Exhibit P20.**
- s. A letter dated 24.03.2011 from the 1st Accused Company to the complainant enclosing the details of further payments made to its investors is filed and marked as **Exhibit P21.**
- t. A letter dated 10.05.2011 from the 1st Accused Company to the complainant submitting additional information with respect to its letter dated 24.03.2011 is filed and marked as **Exhibit P22.**

- u. A letter dated 24.03.2012 from the complainant to the 1st Accused Company seeking documents requisitioned by the auditors appointed by SEBI to certify the repayments by the company to its investors is filed and marked as **Exhibit P23**.
- v. A letter dated 12.04.2012 from the complainant to the 1st Accused Company seeking documents sought vide letter dated 24.03.2012 is filed and marked as **Exhibit P24**.
- w. Report on Statement of Settlement Amounts under CIS Scheme by the 1st Accused Company submitted by auditors, M/s Brahmayya & Co., Chartered Accountant appointed by SEBI to verify the claims of repayment made by the 1st Accused Company is filed and marked as **Exhibit P25**.
- x. **Exhibits P26 to P33** are Certificates under Section 65B of the Evidence Act in respect of the documents mentioned hereinabove.

IV. Points for Argument

- 20) It may be noted from Ex. P5 that the 1st Accused Company entered into an agreement with the investors whereby land was given to the company for maintenance which carried out the planting and irrigation. The Accused persons have been operating CIS and mobilized funds/monies from public investors in the CIS. A CIS cannot be launched and operated without obtaining a certificate of registration under section

11(2)(c) of the SEBI Act read with regulations 3 and 5 of the CIS Regulations.

- 21) In terms of Chapter IX of the CIS Regulations, any person (like the Accused company and its directors) who has been operating a CIS at the time of the commencement of the CIS Regulations is deemed to be an existing CIS and mandated to comply with the provisions of the said Chapter IX by making an application for seeking registration as a CIS irrespective of the amount of money mobilized. The 1st Accused company and its directors did not obtain the necessary registration and hence, as per regulation 73(1) of the CIS Regulations had to wind up the existing scheme/CIS and refund to their investors as per the terms of the scheme/promise made to investors and submit the report to SEBI.
- 22) As regards the suggestion put forth by the Accused during cross – examination of PW -1, that the 1st Accused Company had submitted an application for issue of Certificate of Registration under the CIS Regulations, it is submitted that the 1st Accused Company submitted letters dated 18.12.1999 and 03.01.2000 seeking Certificate of Registration. However, it is pertinent to note that the complainant vide Public Notice dated 10.12.1999 (Ex. P12) advised all the existing CIS entities to apply for registration by 14.12.1999 as per Regulation 5(1) of the CIS Regulations. Therefore, the 1st Accused Company being an existing CIS was required to make an application to the Complainant under Regulation 5 of the CIS Regulations for grant of certificate of registration. In terms of Regulation 5, the said application shall

contain the particulars as specified in Form A. A true copy of the Form A is enclosed herewith as **Annexure 1**.

- 23) It is submitted that the 1st Accused Company failed to submit an application for issuance of Certificate of Registration complying with the requirements stipulated under Regulation 5 read with Form A. The complainant, thereafter, denies receiving any application in terms of Form A of the CIS Regulations.
- 24) The complainant in its letter dated 12.05.2000 (Ex. P13) noted that the 1st Accused Company had not applied for registration by 31.03.2000 and also failed to take steps for winding up of the schemes (s) in terms of the CIS Regulations and was therefore, called upon to show cause why actions should not be initiated against the 1st Accused Company. In response thereof, the 1st Accused Company vide letter dated 24.05.2000 forwarded copies of Board Resolution dated 08.02.2000 and 29.02.2000 along with copy of the Information Memorandum issued by the 1st Accused Company to its investors. In the Information Memorandum dated 14.12.2000 (part of Ex. P 21) sent to the investors, the 1st Accused Company acknowledged that the CIS Regulations came into force in 15.10.1999 which required the Company to either obtain a Certificate of Registration from SEBI to continue as a CIS or winding up the schemes. The Information Memorandum also noted that a company desirous of obtaining registration would be required to meet the minimum net worth of Rupees One Crore within one year from the date of grant of provisional registration which

shall be increased by Rupees One Crore within two years, three years, four years and five years from the date of grant of provisional registration. It was informed to the investors that the directors of the 1st Accused Company were of the opinion that it was not possible to attain the aforesaid minimum net worth of Rupees Three crores in three years and Rupees Five crores within five years, and that in the given circumstances the 1st Accused Company would be winding up its schemes. It is also submitted that the 1st Accused Company in its letter dated 24.05.2000 also informed the Complainant that it has started repaying its investors by way of registering land.

- 25) In view of the above, it is clear that the letters dated 18.12.1999 and 03.01.2000 from the 1st Accused Company belatedly was not in accordance with the requirements stipulated in Regulation 5 read with Form A of the CIS Regulations. It is evident from the Information Memorandum dated 14.02.2000 to its investors that the Company was no longer seeking registration of its CIS with SEBI as it did not meet the relevant net worth criteria. The same was communicated to SEBI vide letter dated 24.05.2000. In its letter dated 09.08.2005 (Ex. P20), the 1st Accused Company has admitted that it failed to comply with the conditions for registration and upon failure to make an application for registration and therefore, the 1st Accused Company had attempted to repay its investors. Therefore, it would not be incorrect to state that the 1st Accused Company had failed to make an application for registration of its CIS.

- 26) Regulation 73(1) of the CIS Regulations states that if an existing CIS *inter alia* fails

to make an application to SEBI for registration, it shall wind up the said existing CIS. As per regulation 73(8) of the CIS Regulations, the payment to the investors has to be made within three months of the date of the information memorandum. On 31.07.2000 (Ex. P 16), the Complainant informed the 1st Accused Company that it was required to file a “Winding Up and Repayment Report” with SEBI in terms of regulation 73(9).

27) In 2005 i.e. after a lapse of 5 years, and after the Complainant had filed this complaint, the 1st Accused Company vide letter dated 09.08.2005 (Ex. P20) submitted details of repayment to its investors with a request to withdraw the complaint. Subsequently, 6 years later vide letter dated 24.03.2011, the 1st Accused Company submitted a Winding Up and Repayment Report along with the Auditors Certificate.

28) The Complainant appointed M/s Brahmayya & Co., Chartered Accountants, Chennai to certify the collections and repayments made by the 1st Accused Company and provide a certificate in this regard to the Complainant. The terms of reference of the appointment of auditors *inter alia* included the following:

- 1) Verification of the authenticity of the “Winding Up and Repayment Report” submitted by the company filed by the entity vide letters dated 09.08.2005 and 24.03.2011 regarding payment.

- 2) Verification of investors who have invested and the amounts:
 - 3) Certifications of investors who have been repaid and the amounts repaid and
Verification of investors who have taken land in lieu of money,
 - 4) Verification of amounts remaining to be repaid, if any,
 - 5) Other Observations
- 29) Vide letters dated 24.03.2012 (Exhibit P23) and 12.04.2012 (Exhibit P22) the complainant sought documents requisitioned by the auditors appointed by SEBI to certify the repayments by the company to its investors. However, the 1st Accused Company failed to provide the same. As a result, the auditors were required to submit their report without critical information.
- 30) The auditors appointed by SEBI in their Report (Ex. P25) observed that the 1st Accused Company could not repay all the investors within the stipulated time of 3 months from the issuance of Information Memorandum dated 14.02.2000. The observations are reproduced as under:

“7. Observations under each Scheme

7.1. Fortune Mangium Farm Scheme (FMFS)

7.1.1. The subscription forms and the unit certificates in respect of investment in FMFS Scheme are not made available of our verification. Therefore, we are unable to verify information about the name and identity of investor, the amount collected, the date of receipt and mode of receipt of investment. We are unable to comment on the accuracy of data submitted by the company to SEBI and to the Court on amount collected under this scheme.

...

...

...

7.1.8 We are unable to comment on whether the land has actually been registered in the name of the original investor who have made investment is not known since the unit certificates of the subscription forms are not available to trace their names in the registration deed.

7.2. Observations from documents from Mangium Unit Scheme

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...

...

7.2.4. The company has not discharged the liability in the manner specified in the information memorandum since majority of the investors has been repaid other than by way of registration of land.

7.2.5 The discharge of liability is not in compliance with the SEBI Regulations since it is not repaid within three months from the date of information memorandum.

7.3. Observations from documents from Fortune Mangium Unit Scheme

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7.3.3. The company has not discharged the liability in the manner specified in the information memorandum since majority of the investors has been repaid other than by way of registration of land.

...

7.2.5 The discharge of liability is not in compliance with the SEBI Regulations since it is not repaid within three months from the date of information memorandum.

8. Verification of the authenticity of the “Winding Up and Repayment Report” submitted by the company filed by the entity vide letters dated 09/08/2005 and 24/03/2011 regarding payment.

...

8.1.2. The winding up report contain only a summary of information and does not information on the details of name of investors, address of investors, date of investment, and date of settlement etc.

8.1.3 We note that the settlement of amounts have been started in the month of May, 2003 however, the payments made during the last four months i.e. April, 2005 to July, 2005 is Rs. 3,28,900 which is around 25% of total amount of Rs. 13,21,100 settled by cash/ DD. The details of payment during the said period are furnished in Annexure 3.4.

8.1.4 In the case of investment under **FMFS scheme** under which the company has raised an amount of Rs. 25,50,000, no subscription forms and no unit certificates are made available. The consent forms are also not available in four cases. We are unable to comment on the authenticity of information furnished by the company due to non – availability of information.

8.9 Verification of amounts remaining to be repaid, if any:

8.9.1. Due to non- availability of books of accounts and other information, we are unable to comment whether any of the investors remain unpaid and the company has claimed that they have settled to all the investors who have invested into the company and nothing remain unpaid.

9. Other Observations

9.1. As mentioned in Para 3.3. above, the Books of account and Bank statements and Cash day book and payment and receipt vouchers were not available which is critical for our reporting on the Statement of Settlement amounts under CIS scheme by the company.

...

9.3. We are unable to comment on the authenticity of the unit certificates surrendered since there is no signature of the unit holder on the face of the certificate that are surrendered to the company for settlement of dues.”

31) In view of the above, it can be said that the 1st Accused Company had failed to repay its investors in terms of Regulation 73 of the CIS Regulations.

32) That, Accused Nos. 2 to 5 have not denied that they are the directors and promoters of the CIS at the relevant time. 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 v. 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.....”

33) 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. Hence, it has been proved that the Accused sponsored and floated CIS and mobilized funds, without due compliance of CIS Regulations.

34) Attention of this Ld. Court is invited to the judgment delivered by Hon’ble High Court of Delhi dated 08.02.2011 in *Ankur Forest & Project Development India Lrd.*

& Ors V SEBI (Crl Appeal No. 220/2010) upholding the order passed by the Ld. Sessions Judge dated 29.01.2010 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 23.09.2011.

- 35) The Complainant is also relying on the judgment passed by the Madras High Court in ***M/s Rhodanthe Agro Ltd. & Ors. vs. Securities and Exchange Board of India*** (Crl. R.C. 842/2005). In this case, the 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.
- 36) 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.

37) In the present case, the Complainant has proved that the 1st Accused Company floated CIS and continued to function as CIS without compliance of the above rules and regulations and has not refunded the entire amount to the said number of investors. Hence, they are liable for the contravention of the provisions of CIS Regulations.

38) 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).

39) 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.

40) 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.”

41) 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 :-

“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.”

42) 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. 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.

- 43) 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.

- 44) In *The London County Council v. Worley* [1894] 2 Q.B. 826, 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.

45) In *Emperor v. Karandas* AIR 1942 Bom 326, 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.

46) In *The State of Bombay v. Bhivandiwala* (1956) IILLJ 153 Bom it was held that the offence of using the premises as a factory without a licence is a continuing offence.

47) 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.

48) In the instant case the 1st Accused 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 have 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.

49) 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.”

50) 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 to 5 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 to 5 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) and Sec. 27 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.

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

1. The petitioners/Accused state that the respondent/Complainant has preferred a private complaint against the petitioners and the company by name M/s. P.G. Fortune Agritech Ltd. For an alleged offence under Reg 68(1), 68(2), 73 and 74 of the Securities and Exchange Board of India Schemes) Regulations, 1999 punishable under Sec 24(1) of the 1992 Securities and Exchange Board of India Act

Section 12(1B) of the Act reads as follows; No person shall sponsor or cause to be sponsored or carry on or caused to be carried on any venture capital funds or collective investment schemes including mutual funds, unless he obtains a certificate of registration from the Board in accordance with the regulations.

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

Regulation 5(1) of the SEBI (Collective Investment Schemes) Regulations, 1999 reads as follows:

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

Regulation 68(1) of the SEBI (Collective Investment Schemes) Regulations. 1999 reads as follows:

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

Regulation 68(2) of the SEBI (Collective Investment Schemes) Regulations, 1999 reads as follows:

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

Regulation 73 of the SEBI (Collective Investment Schemes) Regulations, 1999 reads as follows:

(1) An existing collective investment scheme which:

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

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

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

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

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

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

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

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

(7) The investors who give positive consent under sub-regulation (6), shall continue with the collective investment scheme at their risk and responsibility:

Provided that if the positive consent to continue with the collective investment scheme, is received from only twenty five per cent or less of the total number of existing investors, the collective investment scheme shall be wound up.

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

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

Regulation 74 of the SEBI (Collective Investment Schemes) Regulations, 1999 reads as follows:

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

Section 24(1) of the SEBI Act reads as follows:

(1) Without prejudice to any award of penalty by the adjudicating officer under this Act, if any person contravenes or attempts to contravene or abets the contravention of the provisions of this Act or of any rules or regulations made thereunder, he shall be punishable with imprisonment for a term which may extend to ten years, or with fine, which may extend to twenty-five crore rupees or with both

(2) If any person fails to pay the penalty imposed by the adjudicating officer or 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

2. LIST OF WITNESSES EXAMINED:

Pw-1 Pradeep Ramakrishnan (General Manager, SEBI, Mumbai).

3. BRIEF FACTS OF THE CASE

The Complainant has filed a Private Complaint against the 5 Accused, out of which the first Accused is a Company. The Second to Fifth Accused are the Directors of the First Accused Company. During the pendency of the case, the second Accused died and the Ranking as to the Accused was changed and now the first Accused was the company. The second Accused

is the erstwhile third Accused. The third Accused is the erstwhile fourth Accused and the Fourth Accused is the erstwhile fifth Accused.

(ii) The Allegation in the complaint was that the Securities and Exchange Board of India had authorized one Mr. U. Venugopal, who was the then Assistant General Manager to represent the complainant. It is also contended by the complainant that SEBI was established in the year 1992 by a Central Act for providing protection of the interest of investors in Securities and to promote the development and to regulate the Securities Market and to the matters connected therewith are incidental thereto. It is further contended that under section 11(1) of the Act, the Duty of SEBI to protect the interests of Investors in Securities and to promote the development of and to regulate the securities market to appropriate measures. The said measures were listed in Clause A to Clause M of the Act.

(iii) Further, it is contended in the complaint that after the detail consultations with Regulatory Bodies, decided that an appropriate Regulatory Framework for regulating entities, which issue instruments like, Agro Bonds, Plantation Bonds etc., has to put in place. A press Release was issued by the government on 18.11.1997 conveying that even schemes should be treated as Collective Investment Schemes (CIS) coming under SEBI Act, 1992. In order to regulate such collective investment schemes both from the point of Investor protection as well as promotion of legitimate investment activity, SEBI was asked to formulate the regulations for them.

(iv) Pursuant to which SEBI in the year 1999 notified Regulations for the regulation of the activities of CIS titled as Securities and Exchange Board of India (Collective Investment Schemes) Regulations, 1999. It was further alleged in the complaint that the first Accused company was operating CIS and raised an aggregate amount of nearly 0.33 Crores from the General Public. It is further alleged that the first Accused company filed the Information with SEBI regarding its collective investment scheme pursuant to the press release dated 26.11.1997 or Public Notice dated 18.12.1997. It is alleged by the complainant that Chapter

IX of the said Regulations stipulates that any person who had been operating a CIS at the time of the commencement of the said regulations shall deem to be an existing CIS and comply with the provision of Chapter IX. It is also alleged in the complaint that 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 2 months from the date of notification.

(v) It is alleged that SEBI vide letter dated 15.12.1999 or 29.12.1999 and also by way of Public Notice dated 10.12.1999 given intimation to the first Accused directing it to send Information Memorandum (IM) 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 and as per the SEBI letters, the information Memorandum to the investors was required to be sent latest by 28.02.2000. It is alleged in Para 10 of the complaint that for the interest of the investors and received requests from various persons operating the CIS extended the last date of submitting the application by existing entities upto 31.03.2000 and the same was declared by SEBI by way of Public notice.

(vi) The allegation in para 11 of the complaint that the first Accused failed to make any application with SEBI for registration of the CIS being operated by them as per the said regulations. Further in para 12 of the complaint it was alleged that in terms of Reg. 73(1) of the said Regulations the Existing CIS which failed to make an application for registration with SEBI shall wind up the existing CIS and repay the amounts collected by the investors. Similarly, under Reg. 74 an existing CIS 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 specific in Reg. 73.

(vii) The allegation in para 13 of the complaint that the first Accused company neither applied for registration under the Regulation nor took any steps for winding up the schemes and repayment to the investors as provided in the regulations and had violated section 12(1)

B of the SEBI Act, 1992 and Re.5(1) r/w 68(1), 68(2), 73 and 74. The allegation in para 154 of the complaint that under section 11B of the SEBI ACT[<] directed he first Accused to refund the money collected under the schemes to the persons who invested therein within a period of 1 month from the date of the said direction,. The copy of the said directions was enclosed as Annexure B. The allegation in para 15 of the complaint that despite the directions of SEBI the first Accused company did not comply with the regulations, it is clear that first Accused with dishonest intention is evading the repayment of the amount to the investors.

(viii) The allegation in para 16 of the complaint that the Accused raised a total sum of Rs.0.33 Crores by its own admission and its failure to refund the amounts to the general public who invested their hard earned money in the scheme operated by the first Accused and caused huge pecuniary damage to them.

4. POINTS FOR CONSIDERATION:

A. WHETHER THE FIRST ACCUSED COMPANY HAS SUBMITTED THE APPLICATION FOR REGISTRATION WITHIN THE TIME LIMIT PRESCRIBED BY THE COMPLAINT IN THE PUBLIC NOTICE ISSUED BY THEM?

B. WHETHER THE FIRST ACCUSED COMPANY HAS SUBMITTED THE INFORMATION MEMORANDUM REGARDING THE SCHEMES TO SEBI WITHIN THE TIME LIMIT STIPULATED?

C. WHETHER THE FIRST ACCUSED COMPANY HAS REPAID THE AMOUNT COLLECTED FROM THE INVESTORS AND SUBMITTED THE AUDITOR'S REPORT?

D. WHETHER THE COMPLAINANT HAS PROVED THAT THE FIRST ACCUSED COMPANY HAS DEFAULTED IN REPAYMENT OF THE INVESTOR'S MONEY DISHONESTLY AND CAUSED PECUNIARY DAMAGE TO THEM?

E. WHETHER THE COMPLAINANT HAS PROVED THE CASE AGAINST THE ACCUSED BEYOND REASONABLE DOUBT?

A. WHETHER THE FIRST ACCUSED COMPANY HAS SUBMITTED THE APPLICATION FOR REGISTRATION WITHIN THE TIME LIMIT PRESCRIBED BY THE COMPLAINT IN THE PUBLIC NOTICE ISSUED BY THEM?

i) From the evidence of Pw-1 it is clearly stated that in Ex P-2 which was published by the Government of India, wherein it was informed to the public that the collective investment Scheme will come within the fold of the SEBI Act. The Pw-1 has further deposed that the said Notice was issued during December 1997 and in the said Ex P.3 it has been stipulated that any CIS schemes company has to inform SEBI. The Accused humbly submit that though the SEBI has issued a Public Notice informing the public under Ex P- 2 to submit the information regarding the existing Collective Investment Scheme Companies. Pursuant to the said notification, the First Accused Company had submitted the information in writing to the SEBI under Ex P-5 and the said information was vide letter dated 29.01.1998 which was received by SEBI, wherein the Accused has clearly mentioned the schemes which were run by the company and also the brochures which were relapsed by the company for flotation of the scheme and also the application form for all the schemes etc.,

ii) After Ex P-5, Ex P-6 was submitted by the first Accused company wherein the company has submitted the details of the directors of the company and also the resolution passed by the company dated 31.01.1998 wherein the company has passed a resolution for shifting of the registered office of the company from Bhimavaram to Vishakapatnam and also enclosed the AOA and MOA of the company. Likewise, the Ex P-7 was also submitted by the company on 28.09.1998 wherein the company has submitted the Certificate by its Auditor

for the amount which have been collected under the schemes as on 31.03.1998 and they have also given the detail of the deployment of the Funds etc., The balance sheet as on 31.03.1998 along with Profit and Loss Account and the notes of the Auditor were submitted.

Based on the Ex P.5, P-6 and P-7, the SEBI has issued a Public Notice wherein they have listed the companies which have submitted Public Notice with the head office of the SEEL at Mumbai upto 31.03.1998 information with the company was enlisted in Serial No. 105 in Ex P-8. After Ex P-8 the company has submitted a registered post together with a letter dated 05.11.1998 informing SEBI the change of address and also enclosing a letter dated 18.12.1999 seeking for Certificate of Registration from SEBI and also pleaded condonation of Delay for submitting the application.

iv) Though Ex P.9 was received by SEBI, they have not passed any order as to the Registration of the First Accused Company nor they have replied for the letter dated 18.12.1999 from the Accused company. From the Ex P-25 it is seen that the first Accused company has submitted the application which has been enclosed along with Ex P-9 after a delay of 4 days. Though the company wanted SEBI to condone the delay in filing the application for registration, no orders were passed as to condonation of Delay. But Ex P-25 the Auditor has observed that it is not can see that application was not filed by the First Accused company. But, it was filed by the First Accused Company on 18.12.1999, whereas the 2-month time stipulated expired on 14.12.1999.

v) Whereas in the complaint which has been filed before this Hon'ble Court on 20.02.2002, i.e. 10 years prior to Ex P-25 which speaks about the compliances of the regulations by the first Accused company. The independent Auditor has categorically stated that the application was filed with 4 days' delay and the question of not complying with Ex P-12 Public Notice does not arise. The Accused humbly submit that SEBI has filed the complaint pre-maturely on 20.02.2002 without verifying the records about the compliance made by the first Accused company. This only goes to show that without verifying all the records by the

complainant, they have initiated the complaint alleging that the first Accused company has not filed an application for registration of the company with SEBI being an existing CIS company.

B. WHETHER THE FIRST ACCUSED COMPANY HAS SUBMITTED THE INFORMATION MEMORANDUM REGARDING THE SCHEMES TO SEBI WITHIN THE TIME LIMIT STIPULATED?

(1) The Accused submit that under Regulation 73(2), the existing CIS should be wound up under sub-regulation (1) shall send an Information Memorandum to the investors who have subscribed to the CIS within 2 months from the date of intimation from the Board dealing with the State of Affairs of the CIS, the amount repayable to each investor and the manner in which the amount is dealt in. As per Sub Regulation (3) the Information Memorandum should be signed and dated by all the Directors of the CIS.

(11) The Ex P-13 was the letter sent by SEBI on 12.05.2000 informing about the SEBI Regulations and also enlightening about the prosecution under the SEBI Act. Pursuant to the said Ex P-13, the first Accused company has forwarded the said communication dated 24.05.2000 wherein they have clearly mentioned 60.5% of their repayment commitment will be completed. They also stated that they have applied for Panchayath layout wherein they can register land through Magnum Unit Scheme and Fortune Magnum Unit Scheme. They have further stated that 75% of the Repayment commitment by way of land registration by 07.06.2000 will be satisfied and that once the registration is completed they will submit the Photostat Copies of the Documents and discuss with the SEBI official for the balance 25% repayment and they have also stated that they have adequate funds to meet the repayment to the 25% of investors which will be around Rs. 10 Lakhs.

iii) The Ex P-25, the Auditor's Report has stated that the first Accused company has filed Information Memorandum within the time frame fixed by SEBI and that was not disputed by the complainant in the complaint filed by them before this Hon'ble Court. The

complainant has forwarded a letter dated Ex P-16 dated 31.07.2000 that they wanted the first Accused company to send a detailed Report in the format specified by SEBI and also has stated that the said Report has to be titled as Winding Up and Repayment Report. The First Accused Company respectfully submits that they have submitted the Winding Up and Repayment Report before the complainant vide letter dated 09.08.2005 which is Ex P-20, wherein the Winding Up and Repayment Report is in terms of Reg.73 and 74.

iv) Along with Ex P-20, the first Accused company has enclosed the Certificate duly signed by the Auditor wherein it is clearly stated that how the investors are repaid by them and they have submitted the Winding Up and Repayment Report. Along with the same the First Accused Company has also enclosed the 8th Annual Report for the Financial Year 2004-05 wherein the Profit and Loss Account and balance Sheets were enclosed. In the said Exhibit, the First Accrued company has filed the Balance Sheet duly signed by the Auditor and 2 of its Directors. The complainant has not raised any query in respect of the payment made to the Investors. There is no any specific averment before this Hon'ble Court when the oral evidence was taken stating that they deny the contents of Ex P-20 or the amount repaid by the First Accused Company to the Investors.

C. WHETHER THE FIRST ACCUSED COMPANY HAS REPAID THE AMOUNT COLLECTED FROM THE INVESTORS AND SUBMITTED THE AUDITOR'S REPORT?

D. WHETHER THE COMPLAINANT HAS PROVED THAT THE FIRST ACCUSED COMPANY HAS DEFAULTED IN REPAYMENT OF THE INVESTOR'S MONEY DISHONESTLY AND CAUSED PECUNIARY DAMAGE TO THEM?

E. WHETHER THE COMPLAINANT HAS PROVED THE CASE AGAINST THE ACCUSED BEYOND REASONABLE DOUBT?

The Accused state that Ex P-25 says that the repayment records were produced before them. But they could not find the receipts for the amount paid as Cash to the Investors. But, the Independent Auditor appointed by the complainant did not make any allegations against the First Accused Company that they have dishonestly collected the money and that they have not settled the Investors in full and defrauded them. The report of the Auditor in Ex P-25 nowhere contains the details as to whom the First Accused Company has not repaid. In the cross examination of Pw-1 he has categorically admitted that no investor has lodged a complaint with SEBI directly for non-receipt of Invested money. Whereas the Pw-1 has pointed out a particular portion of Ex P-25 wherein there is a mention about a person by name Parithosh Chaudry was not repaid the money invested. But, the Auditor who has given Ex P-25 has not stated as to whether the said person who has complained of non- payment or as to what is the amount not repaid to whom and under what scheme he was enrolled by the company.

ii) Pw-1 has admitted that SEBI has not given any information nor documents to the Auditor and that it is the Accused company which had given all the details and the records to the Auditor who has given the report under Ex P-25. Further, it is specifically stated in page 17 in Para 8.9.1 of Ex P-25 that the Auditor has not specifically determined as to the amount due to the investors in their report. Further, it has been deposed by Pw-1 that the Auditor did not have the accounts book and the information's were not submitted to him. It has been deposed by Pw-1 that SEBI has got all the powers to seek documents and information from the First Accused Company and in an event the company has not furnished any details, SEBI has got all the right to get the same from the Accused. Further, PW-1 admits that SEBI has not given any letter to the first Accused company stating that they need further information or the information given by the company is not sufficient to SEBI.

Further, Pw-1 has admitted that the in the event that the First Accused Company refuses to give the information to the independent Auditor appointed by SEBI, that auditor can request SEBI to furnish the details from the First Accused Company. But interestingly,

no such request has been made by either the Complainant nor the Auditor from the First Accused Company and no material has been placed by the complainant to that effect.

iv) The First Accused Company submit that Ex P-20 to P-22 were sent by them wherein the first Accused company has provided the details of the Repayment made to the investors pursuant to the Information Memorandum together with Reg. 73 and 74. Wherein, out of the 343 Investors in all the 3 schemes floated by the Company ie. Fortune Magnum Farm Scheme - 17 Investors repaid by way of registration of land at Rs. 125/Sq. yard.

Magnum Unit Scheme - 12 Investors repaid by way of registration of land at Rs. 125/Sq. yard. 178 Investors repaid by way of cash and Drafts.

Fortune Magnum Unit Scheme 136 Investors repaid by way of cash and Drafts.

v) After receipt of Ex P-20, 21 and 22, SEBI has not made any query regarding the settlement nor there was any claim from the investors either to the complainant or to the Auditor. Ex P-20 in which the information regarding the settlement was intimated to SEBI as early as 09.08.2005 and that was acknowledged by SEBI. Following which Ex P-25 was filed. The repayment to the investors is evident on seeing Ex P-20 to P-22 filed by the complainant.

vi) The Accused submit that the Auditor's Report which was submitted by the Auditor during 2012 the Auditor has not specifically complained about non settlement of Investor's dues. Further, when the individual investor's name has been specified in Ex P-22, the complainant has not verified as to the repayment from those persons who are listed in those three schemes. The first Accused company submits that though a vague allegation has been made in the complaint that the money are collected with an intention to defraud the investors and those monies were not repaid to the investors, is not correct and the Pw-1 also comes before this Hon'ble Court and has deposed and banking on Ex P-25 to prove the

offences which have been alleged to have been committed by the Accused in these case. But, Ex P-25 does not contain any report stating that the Accused had failed to discharge the individual investors or to what extent they have discharged and what is the amount still due has not been specified in Ex P-25.

vii) The First Accused company submits that when the complainant has come out with a clear case of non registration of Company's name after the formulations of the CIS Regulations, non payment of individual investors of their investments and not submitting the documents containing the payments made etc., But, the complainant could not prove any of those allegations from their records or from the records of the company or even from the report of the independent auditor appointed by SEBI after 10 years from the date of filing the complaint. Therefore, the learned counsel for the defence prays for an acquittal.

12. This court has given its thoughtful consideration to the rival submissions made by either side. It is the case of the prosecution that the last decade has 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. The initial success in mobilizing funds by some of these companies lead to a mushrooming of such schemes throughout the country. 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 16, 1997, conveying that such schemes should be treated or Collective Investment Schemes coming under the SEBI Act, 1992.

13. 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. The complainant herein notified regulations for the regulation of the activities of collective investment schemes, filled as Securities and Exchange Board of India (Collective Investment Schemes) Regulations, 1999. The 1st Accused herein is operating collective investment schemes, and raised an aggregate amount of nearly Rs. 0.33 Crores from the general public. In pursuance to the SEBI press release dated November 26, 1997, and public notice dated December 18, 1997, the 1st Accused company filed information/details with SEBI regarding its collective investment schemes.

14. 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.

15. 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. 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 1st Accused failed to make any application with SEBI for registration of the collective investment schemes being operated by it as per the said regulations.

16. In terms of Reg.73 (1) of the said regulations, an 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-3. However, the 1st Accused 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 (18) 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 said regulations. On December 7, 2000 SEBI by exercising its power conferred upon it under Sec.11B of Securities and Exchange Board of India Act, 1992 directed Accused no.1 to refund the money collected under the aforesaid collective investment schemes of the Accused to the persons who invested therein within a period of one month from the date of the said directions.

17. According to the complainant, despite the above directions by it, 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 1st Accused raised a total amount of nearly Rs. 0.33 Crore 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 has committed the violation of Sec. 12 (18) 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 Sec.24 (1) of Securities and Exchange Board of India Act, 1992 and the Accused No.2 to 5 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. Therefore, the complainant prays for conviction of the Accused for the above violations.

18. In order to prove the above case, the complainant has examined its General Manager as P.W.1. P.W.1, in his evidence deposed in lines with the complaint and exhibited Ex.P1 to P33. On careful perusal of the records, the press release dated 26th November, 1997 by the SEBI indicating the regulations of collective investment scheme is marked as Ex.P2. The public notice dated 18.12.1997 is marked as Ex.P3. Again, press release dated 20th October 1999 is marked as Ex.P4. Pursuant to the notices, more particularly in pursuance of Ex.P2, the 1st Accused herein, represented by its Managing Director, the 2nd Accused herein has furnished Ex.P5 details dated 29.01.1998. On careful perusal of Ex.P5, it is found that the 1st Accused has regretted for the delay in submission of the information and sought for condoning the said delay. Along with the said letter, the 1st Accused has furnished Lease and Maintenance Agreement entered into with its investors, the various schemes offered by it and the terms and conditions of the scheme. The said letter was not denied by SEBI.

19. However, it appears that on 15th April, 1998, the complainant sought for certain information relating to the schemes floated by the 1st Accused. (The said document is not marked.) In response to the said letter, the 1st Accused company has sent Ex.P6 letter dated 28.04.1998 enclosing certified copy of the Memorandum of Association and Articles of Association, name and address of the Directors, compliance certificate from the Managing Director. Further, they sought two weeks time for furnishing Audited Balance Sheet and Deployment of funds under various schemes. In the meantime, the 1st Accused company has shifted to Vishakapatnam and informed SEBI relating to change in address for correspondence. As per the particulars furnished vide Ex.P6, the Accused 2 to 4 herein are

the Directors during the relevant point of time.

20. It appears that again on 15th September, 1998, SEBI has sent a letter to the 1st Accused claiming certain details (The said letter is not produced and marked). In response to the said letter, the 1st Accused has sent Ex.P7 letter enclosing its latest Audited Balance Sheet and the State of deployment of funds mobilised under various schemes duly certified by the Auditors. In the meantime, the SEBI has caused Ex.P8 public notice dated NIL putting the names of the companies in respect of whom information are filed with Head Office at Mumbai upto 31st March, 1998. The 1st Accused name is figured at Sl.No.105. In response to the letter dated 16.10.1998, the 1st Accused company has made Ex.P9 communication once again disclosing its new address.

21. In the said letter, the 1st Accused company have confirmed that they have complied with all the terms issued by SEBI with regard to collective investment scheme. According to the 1st Accused company, they have got only one collective investment scheme known as Fortune Mangium Unit Scheme which has been credit rated by ICRA. Therefore, they sought for issuance of certificate of registration under SEBI (Collective Investment Schemes) Regulations, 1999. The said letter enclosed its earlier letter dated 18th December, 1999. In response to Ex.P9, the SEBI has issued Ex.P10 communication acknowledging the information about the existing collective investment schemes filed by the 1st Accused company. Further, it advised the 1st Accused company to furnish the information strictly as per the enclosed format so as to reach them by October 15, 1999.

22. On 21st October, 1999, vide Ex.P11, SEBI has sent another communication informing the 1st Accused that the SEBI (Collective Investment Schemes) Regulations, 1999 were notified on October 15, 1999 and a copy of the said Regulations has been posted on the SEBI Website "www.sebi.gov.in". Public notice issued to all existing collective investment scheme dated 10th December, 1999 is marked as Ex.P12. On 12th May, 2000, SEBI has issued notice to the 1st Accused company stating that SEBI has extended the last date for submitting application by existing entities upto March, 31, 2000 and the same was intimated by the SEBI by a Press Release and Public Notice. Therefore, the petitioner was directed to apply for registration by March 31, 2000.

23. Since the 1st Accused company has failed to make an application for registration, the SEBI, as per Regulation 73(1) of CSI Regulations shall wind up the existing scheme and repay the investors. Further, it is claimed that in pursuance of Public Notice dated December 10, 1999, the 1st Accused company herein is not desirous of obtaining provisional registration from SEBI or had failed to make an application for registration to SEBI in terms of Regulation 73(2), cast an obligation to send an information memorandum to the investors detailing the state of affairs of the scheme, the amount repayable to each investors and the manner in which such amount is determined. Accordingly, the Accused was required to send the information to the investors by February 28, 2000. Further, it is contended that the 1st Accused company had not applied for registration by March 31, 2000 and also failed to take steps for winding up of the scheme in terms of Regulations. Therefore, according to the SEBI, it is violative under the provisions of Section 12(1B) of SEBI Act, 1992 and regulation

5(1) read with regulation 68(1), 68(2), 73 and 74 of SEBI (Collective Investment Schemes) Regulations, 1999 and therefore, called upon the 1st Accused as to why one or more or all of the following actions should not be initiated against the 1st Accused company.

i) requiring the person concerned not to collect any money from investors or to launch any scheme.

ii) prohibiting the person concerned from disposing of any of the properties of the scheme acquired in violation of these regulations.

iii) requiring the person concerned to dispose of the assets of the scheme in a manner as may be specified in the directions.

iv) requiring the person concerned to refund any money or the assets to the concerned investors along with the requisite interest or otherwise, collected under the scheme.

v) prohibiting the person concerned from operating in a capital market or from accessing the capital market for a specified period.

24. In response to the letter dated May 12, 2000, the 1st Accused company has informed SEBI stating that it had sent information memorandum to its investors on February 14, 2000. Further, it has stated that on 29.02.2000, they discuss with Mr.Suresh Gupta, about their information memorandum and further they intimated that they are getting positive response for their information memorandum and they are registering land to all the Fortune Mangium Farm Scheme members with their consent, whereby 60.5% of their repayment commitment will be completed. They had applied to Panchayat Layout so that they can register land to Mangium Unit Scheme and Fortune Mangium Unit Scheme

members and they are hopeful of completing 75% of their repayment commitment by way of land registration by 7th of June, 2000. Once the registrations are completed they shall come to Chennai with the xerox copies of the registered documents and shall discuss with him for 25% balance repayment schedule programme. Further, they assure that they will be left with adequate land to meet the repayment schedule of the balance 25% investors, which will be around 10 lacs. The said letter is marked as Ex.P14.

25. In the meantime, vide Ex.P15, the ICRA Limited has withdrew its rating assigned by ICRA to the collective investment schemes of PG Fortune Agritech Limited. Again, on 31st July, 2000, the complainant vide Ex.P16 letter intimated the 1st Accused company that as per Regulation 73, they are required to file a detailed report in the format specified by SEBI so as to reach SEBI within 3 and 1/2 months of the date of the information memorandum. Further, disclosed their website address where the format of the said report titles "winding up and repayment report" specified by SEBI is available. Further, vide Ex.P17 letter dated 18th December, 2000, the SEBI has communicated copy of directions u/s 11B of the SEBI Act, 1992 r/w Regulations 65 and 73 of SEBI (Collective Investment Schemes) Regulations, 1999. Again, on July, 2, 2001, the directions u/s 11B of the SEBI Act, 1992 reissued to the various companies, including the 1st Accused herein. On 9.8.2005, since the 1st Accused company has failed to comply with the directions u/s 11B of the SEBI Act, the complainant has come up with the present complaint.

26. It is pertinent to mention herein that in all the communications made by SEBI, there is no reference to the letters written by the 1st Accused company. All the notices issued are either public in nature or general notice to all the companies without any application of mind. On careful perusal of the records, it is found that the 1st Accused company has made several communications relating to registration of its scheme under the Collective Investment Scheme Regulations. The said communications were produced and marked by the complainant himself as Ex.P5, P6, P7, P9 & P14. However, none of the above communications were neither referred to in the notices nor in the complaint. The only point canvassed by the learned counsel for the complainant is that the 1st Accused company has not furnished the information required as per the format.

27. Further, pending the above complaint, the 1st Accused company vide Ex.P20 has made a communication to the complainant stating that it enclosed the winding up and repayment report along with the Auditors Certificate regarding the repayment to the unit holders in terms of Section 73 and 74 of SEBI Regulations, 1999. Wherein, the 1st Accused company has claimed that they have collected a sum of Rs.25,50,000/- under the scheme Fortune Mangium Farms Scheme, from 17 Unit Holders, they collected Rs.11,49,000/- in Mangium Unit Scheme from 190 Unit Holders and they collected Rs.6,23,000/- in Fortune Mangium Unit Scheme from 136 Unit Holders. They informed SEBI that they repaid fully to investors and therefore, pray for drop the court proceedings before the XXIII Metropolitan Magistrate, Chennai in C.C.No.8803/2002.

28. Further, they made similar request vide Ex.P21 stating that the 1st Accused company settled to the investors under Scheme-1 and II as on 24.5.2000 and investors for the balance amount of Rs.8,79,000/- was settled by tracing the investors with great difficulty as on 22.7.2005. Further, the settlement to the investors under Scheme-III, Rs.6,22,000/- after tracing out them with great difficult by 22.7.2005. The winding up and repayment report was also enclosed with the said letter. Further, the letters were acknowledged by the SEBI. From the above it is clear that the First Accused company had claimed that it settled its investors even before the filing of the present complaint by the complainant. However, the complainant herein without even verifying the same, mechanically filed the present complaint by suppressing all the communications made by the first accused company.

29. Further, it is found that A1 company had made similar request to drop the complaint vide Ex.P24 also. In view of the same, the complainant herein has appointed one Brahmayya & Company, Chartered Accountant to go into the report and to make observations. The report of Brahmayya and Company is marked as Ex.P25. On careful perusal of Ex.P25 Auditors Report, it is found that the said Auditors made various comments on the scheme floated and wound up by the 1st Accused company. The Auditors Report has pointed out only one discrepancy in the repayment, which is relating to one Mr.Paritosh Choudhary. According to the Auditors Report, the Directors have submitted in their affidavit that there were no complaints received subsequent to winding up report dated 25th July 2005 filed with SEBI. As per the information available, there were no complaint been made to SEBI or pending for disposal, except the complaint of Mr.Paritosh Choudhary.

30. It is pertinent to mention here that though the said Auditors Report was filed before this court, the prosecution has not examined the Auditor, who prepared the said report before this court. It is the contention of the Accused that they have paid the entire money due with its investors. Even the Auditors cannot point out any default in payment except the case of the said Mr.Paritosh Choudahry. The SEBI has not made any enquiry with regard to the same and filed it before this court. Neither the said Mr.Paritosh Choudhary nor the Auditor was examined to prove the said claim. It is the settled position of law that it is the duty of the prosecution to prove the case beyond all reasonable doubt and the Accused can defend the case by preponderance of probabilities. As per CIS Regulations, the existing schemes can apply for provisional registration or permanent registration and if it is not possible it can wind up its schemes and repay to its investors. According to the Accused, all the depositors were repaid. As stated supra, the Auditors appointed by the complainant pointed out only one discrepancy and the same was not fully proved before this court.

31. The learned counsel for the Accused contended that the SEBI has every power to call for records from the company, but it has not called for records from the company to satisfy itself whether the Accused have complied with the regulations fully or not. Even after enquiry, they have not brought any materials before this court to show that the Accused company have not repaid as per the regulations. Though there are certain delay in making repayments, in the given facts and circumstances of the case, this court is of the considered view that the said delay can be condoned. Therefore, this court is of the considered view that the prosecution has failed to prove its case beyond all reasonable doubt

and therefore, the Accused herein are entitled for acquittal from the charges levelled against them.

32. In the result, the Accused 1, 3 to 5 are found not guilty of the offences punishable u/s 24(1) of SEBI Act r/w 27 of SEBI Act and they are acquitted from the said charged. The said acquittal is recorded u/s 235(1) of Cr.P.C. Pending Trial, the Accused 2 died and therefore, the charges against him got abated.

(i) The Accused were not arrested. No bail bond was executed.

(ii) No material object was recovered and marked before this court and therefore, no property order is passed.

Dictated to the stenographer, transcribed by him,, corrected and pronounced by me in the Open Court this, the 28th day of November, 2024.

S KARTHIKEYAN Digitally signed by
S KARTHIKEYAN
Principal Sessions Judge, Chennai.

List of prosecution side witnesses:-

P.W.1 - Thiru.Pradeep Ramakrishnan.

List of prosecution side Exhibits:-

Exhibit No.	Date	Description of Document
Ex.P1	--	Letter of Authority.
Ex.P2	26.11.1997	Press Release of SEBI.
Ex.P3	18.12.1997	Public Notice of SEBI.
Ex.P4	20.10.1999	Press Release of SEBI.
Ex.P5	29.1.1998	Letter from the 1st Accused company to SEBI.
Ex.P6	28.4.1998	Letter from the 1st Accused company to SEBI.
Ex.P7	28.9.1998	Letter from the 1st Accused company to SEBI.
Ex.P8	--	Public Notice of SEBI.
Ex.P9	5.11.1998	Letter from the 1st Accused company to SEBI.

Ex.P10	22.9.1999	Letter from SEBI to the 1st Accused company.
Ex.P11	21.10.1999	Letter from SEBI to the 1st Accused company.
Ex.P12	10.12.1999	Public Notice issued by SEBI.
Ex.P13	12.5.2000	Letter from SEBI to the 1st Accused company.
Ex.P14	24.5.2000	Letter from the 1st Accused company to SEBI.
Ex.P15	5.7.2000	Letter from I.C.R.A. Limited to the 1st Accused company.
Ex.P16	31.7.2000	Letter from SEBI to the 1st Accused company.
Ex.P17	18.12.2000	Letter from SEBI to the 1st Accused company.
Ex.P18	2.7.2001	Directions of the SEBI.
Ex.P19	10.7.2001	Letter from SEBI to the 1st Accused company.
Ex.P20	9.8.2005	Letter from the 1st Accused company to SEBI.
Ex.P21	24.3.2011	Letter from SEBI to the 1st Accused company.
Ex.P22	10.5.2011	Letter from SEBI to the 1st Accused company.
Ex.P23	24.3.2012	Letter from SEBI to the 1st Accused company.
Ex.P24	12.4.2021	Letter from SEBI to the 1st Accused company.
Ex.P25	15.11.2012	Report on statement of settlement amounts under CIS scheme by PG Fortune Agritech Limited.
Ex.P26	20.12.2023	Certificate u/s 65-B of Indian Evidence Act to Ex.P5
Ex.P27	20.12.2023	Certificate u/s 65-B of Indian Evidence Act to Ex.P6
Ex.P28	20.12.2023	Certificate u/s 65-B of Indian Evidence Act to Ex.P7
Ex.P29	20.12.2023	Certificate u/s 65-B of Indian Evidence Act to Ex.P14
Ex.P30	20.12.2023	Certificate u/s 65-B of Indian Evidence Act to Ex.P15
Ex.P31	20.12.2023	Certificate u/s 65-B of Indian Evidence Act to Ex.P20
Ex.P32	20.12.2023	Certificate u/s 65-B of Indian Evidence Act to Ex.P21
Ex.P33	20.12.2023	Certificate u/s 65-B of Indian Evidence Act to Ex.P22

List of Material Objects:-

-Nil-

List of Defence side witness and Material Objects :-

-Nil-

List of Defence side documents :-

-Nil-

S
KARTHIKEYAN

Digitally signed
by S
KARTHIKEYAN

Principal Sessions Judge.

Draft / Fair Judgment :

Spl.S.C.No.135/2011

Dated : 28.11.2024.