

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

(More than 22 years old)

(Targeted case in terms of letter No.7968/CFM/DHC/2024 dated 15.04.2024 by Hon'ble High Court of Delhi on the subject "Action Plan for Arrears Reduction in District Judiciary").

CNR No.DLSW01-006474-2023

CC No.539/2023

SEBI Vs. Kuber Planters Ltd. & Ors.

Security and Exchange Board of India,
a statutory body established under the provisions
of Securities and Exchange Board of India Act, 1992,
having its regional office at Block No.1,
Rajendra Bhawan, Rajendra Place District Centre,
New Delhi-110008 and represented by its
Asstt. General Manager Ms. Jyoti Jindgar.

.....Complainant

Versus

1. **Kuber Planters Ltd.**
a company incorporated under the provisions of
Companies Act, 1956 and having its
registered office at Kuber House,
E-20, Greater Kailash-I, New Delhi-110048.
2. **Sh. Pradyuman Kumar Sharma (*Proceedings abated*),**
S/o Sh. D.C. Sharma,
Director of accused No.1,
R/o S-32, Greater Kailash-I, New Delhi-110048.
(Proceedings abated vide order dated 11.05.2018)
3. **Smt. Rowena Sharma,**
W/o Sh. Pradyuman Kumar Sharma,
Director of accused No.1,
R/o S-32, Greater Kailash-I, New Delhi-110048.

4. **Sh. Ajit Edwin (P.O.),**
Director of accused No.1,
R/o S-74, Greater Kailash-I, New Delhi-110048.
(Already declared Proclaimed Offender on 24.11.2011)

	Accused Persons
Date of Institution of complaint	: 24.12.2001
Date of Arguments	: 07.09.2024
Date of pronouncement	: 23.09.2024

JUDGMENT

Facts

1. Succinctly stated, the accused No.1 company namely Kuber Planters Ltd. was running a Collective Investment Scheme (hereinafter referred to as 'CIS') namely Kuber Dhanvriksha, Raj Lakshmi Dhanvriksha, Child Career Teak Unit, Dhanvriksha Retirement Teak Unit, Life-Time Monthly Return Teak Unit, High Regular Teak Unit and Kuber Popular Dhanvriksha and raised an aggregate amount of Rs.87 crores from the general public.

2. The private entrepreneurs had undertaken plantation activities on a commercial scale, however, the promoters themselves invested a minimum amount in such ventures and raised the majority of funds from ordinary investors in the absence of any regulatory mechanism. The companies promised high returns coupled with the fiscal incentives which helped these companies to mobilize large amounts over a period of time.

3. The Government of India, after detailed consultations with the regulatory bodies, decided that an appropriate regulatory framework for regulating entities, which issue instruments like

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

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

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

6. In terms of Chapter IX of the CIS 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 schemes 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 an collective investment schemes 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.

7. SEBI having regard to the interest of investors and request received from various persons operating CIS 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.

8. The accused No.1 made an application with SEBI for registration of CIS being operated by it as per the said regulations on 17.08.2000. SEBI considered the application filed by the accused No.1 and rejected the said application, vide order dated 21.12.2000. Vide the said order dated 21.12.2000 of SEBI, the accused No.1 was also directed to wind up its CIS and repay the amounts raised from the investors in the manner provided under Regulation 73 of the CIS Regulations. On 25.07.2001, SEBI by exercising its powers conferred upon it under Sec.11B of SEBI Act directed the accused no.1 to refund the money collected under the aforesaid CIS to the persons who invested therein within a period of one month from the date of the said directions. However, SEBI received no information from the accused No.1 as to whether it complied with the directions of SEBI which clearly indicated that accused No.1 was intentionally and with dishonest intentions evading the repayment of the amounts collected by it from the investors. Accused No.1 also did not take any step for winding up of the schemes and repayment to the investors as provided under the regulations and as such, violated the provisions of Sec.11B, 12 (1B) of SEBI Act and Regulation 5(1) r/w Regulation 68(1), 68(2), 73 and 74 of the said

regulations.

9. The accused No.1 raised a total amount of nearly Rs. 87 Crores and its failure to repay 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. Therefore, the accused No.1 had committed the violation of Sec.11B, 12 (1B) of SEBI Act read with Regulation 5(1) r/w Regulation 68(1), 68(2), 73 and 74 of the CIS Regulations, which is punishable under Sec.24 (1) of SEBI Act and accused No.2 to 4 being the directors and/or persons in charge of and responsible to the accused No.1 for the conduct of its business, are liable for the violations of the accused No.1, in terms of Sec.27 of SEBI Act.

Summoning

10. All the accused persons i.e. accused no.1 to 4 including accused no.1 company were summoned for the said offences vide order dated 24.12.2001. Accused No.2 and 3 duly appeared in the Court and accused no.1 company was represented by accused No.2 at that time. Accused No.4 Ajit Edwin failed to appear and he was declared P.O. vide order dated 24.11.2011.

Notice

11. Notice for violation of Section 11B, 12(1B) of SEBI Act and Regulation 5(1) r/w Regulation 68(1), 68(2), 73 and 74 of CIS Regulations, punishable under Section 24 and 27 of SEBI Act was framed on 01.03.2012 against accused no.1 to 3. Accused No.2, on behalf of himself as well as on behalf of

accused No.1 company and pleaded not guilty to the said notice and claimed trial. Similarly, accused no.3 Rowena Sharma also pleaded not guilty to the notice and claimed trial.

12. During trial, since accused No.2 Pradyuman Kumar Sharma expired and proceedings against him were abated vide order dated 11.05.2018, accused no.1 company is now being represented by accused No.3. Accused No.4 is P.O. Hence, the present judgment is against accused No.1 company and accused No.3.

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

14. It is relevant to note here that while recording the evidence of witness Ms. Versha Agarwal, she is interchangeably referred to as CW-1 or PW-1. Similarly, documents exhibited by her have also been exhibited interchangeably as 'Ex.PW' or Ex.CW'. The documents shall be mentioned in the judgment in the same manner as they have been exhibited.

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

“Govt. of India vide press release dt. 18.11.97 decided that the companies that were issuing agro bonds, plantation bonds etc. will termed as collective investment scheme(CIS) coming under the purview of Section 11(2) (c) of Sebi Act, 1992. Sebi vide press release dt. 26.11.97 and public notice dt. 18.12.97 directed the companies that

were having CIS to file information with Sebi regarding their directors, funds mobilized, details of schemes etc. if they were desirous of taking benefit of Section 12(1)(b) of Sebi Act. In response to this public notice dt. 18.12.97 accused no. 1 filed information about its schemes, details and background of promoters and sponsors of the scheme with Sebi. The letter was signed by Mr. Ashish as authorised signatory. As per this letter accused 2, 3 and 4 were the promoters and sponsors of the scheme. The said letter received by Sebi on 13.01.98 is Ex.PW1/1 (colly). During further correspondence accused no. 1 vide its letter dt. 24.04.98 signed by Mr. Edwin, as director/authorised signatory submitted the list of directors and the situation of its regd. Office, compliance certificate and auditors report for the year ended 31.03.99 and the said letter is Ex.PW1/2(colly). As per information submitted by Ex.PW1/2 accused no. 2 to 4 were the directors of accused no. 1 company. During further correspondence accused no. 1 company vide its letter dt. 22.05.98 submitted information to the Sebi regarding deployments of funds mobilized under various scheme and as per the fund flow statement attached with the said letter the advance from sale of units has been shown as Rs.34,71,933,750.00 and the said letter is Ex.PW1/3(colly). Vide its letter dt. 26.06.98 the accused no. 1 submitted their statutory auditors certificate to the effect that w.e.f. 24.02.98 accused had not mobilized any funds under CIS and the said letter is Ex.PW1/4. Sebi vide letter dt. 03.07.98 informed the accused no. 1 that in exercise of powers under Sebi Act, the Chairman Sebi had appointed M/s. M.Mittal & Aggarwal as Auditors and copy of said letter is Ex.PW1/5. Accused no. 1 vide letter dt. 11.09.98 signed by Mr. Ajit Edwin as director submitted that no maturity was due till December, 1998 in any CIS launched by them and the said letter is Ex.PW1/6. M/s. M.Mittal and Aggarwal submitted its Special

Audit report dt. 15.09.98 with Sebi with respect to audit conducted by it of accused no. 1 company. As per this report the accused no. 1 had raised an amount of Rs.86.37 crores from the public during the period 1995-98 under its CIS and accused persons had accepted deposits in contravention of direction of Sebi. The said report is Ex.PW1/7(colly) running into 60 pages. Sebi vide its letter dt. 25.09.98 directed the accused no. 1 and its directors to show cause as to why prosecution should not be launched against them for mobilizing funds under their CIS without obtaining credit rating of these schemes and contravening the directions issued u/s 11B of Sebi Act, 1992 issued vide Sebi letter dt. 27.02.98. The undelivered letter addressed to Mr. Ajit Edwin is Ex.PW1/8. The regd. Envelope is Ex.PW1/9. The accused no. 1 vide its letter dt. 12.10.98 signed by Mr. Ajit Edwin submitted that the accused had taken all steps required on its part to restrict agents from mobilizing any deposit on behalf of company. The said letter is Ex. PW1/10(colly). Sebi received a complaint of Mr. Om Narayan Saxena dt. 20.10.98 enclosing therewith copies of newspapers wherein it was stated that clean chit has been given to Kuber group of companies and for non-payment of his invested amount and the said complaint is Ex.PW1/11(colly). Sebi vide letter dt. 15.10.98 directed the accused no. 1 to explain how the resolution was passed in the meeting on Board of Directors held on 26.02.98 regarding Sebi letter dt. 27.02.98 conveying the order of Chairman Sebi dt. 24.02.98. the accused no. 1 was also advised to explain the discrepancy observed in the audit report regarding details of deposits accepted on behalf of company in contravention of direction of Sebi during the period 26.02.98 to 10.03.98 and the said letter is Ex.PW1/12. A reminder to this letter was issued vide letter dt. 23.12.98 and the same is Ex PW1/13 and the AD card with respect to said letter is Ex.PW1/14. Another reminder was sent vide letter

dt. 24.03.99 and the same Ex.PW1/15 and the AD card with respect to said letter is Ex.PW1/16. In response to Sebi letter dt. 21.05.99 addressed to RBI regarding possible default by Kuber group of companies, RBI vide its letter dt. 10.06.99 informed that they had launched criminal proceedings against Kuber Auto General Finance and leasing Ltd. on 12.05.99 at Delhi and the copy of said letter dt. 21.05.99 is Ex.PW1/17 and copy of letter dt. 10.06.99 is Ex. PW1/18.

Sebi CIS regulations were notified on 15.10.99. the notification of the regulation were communicated to the general public vide press release dt. 20.10.99. A copy of this press release was sent to the accused no. 1 company vide specific letter dt. 21.10.99. The office copy of this letter is Ex.CW1/19. No reply was received regarding this letter. The compliances required under the provisions of Sebi Act, 1992 and Sebi CIS Regulations, 1999 were communicated to the accused no. 1 company vide specific letters dt. 10.12.99 and 15.12.99. Office copies of same are Ex.CW1/20 and Ex.CW1/21. Requirements of these compliances also communicated through a public notice that was published in Hindustan Times on 19.12.99. The copy of public notice is Ex.CW1/22. As no response was received from the accused no.1 company a show cause notice was issued vide letter dt. 12.05.2000. The accused was called upon to show cause why actions mentioned in the letter should not be initiated. The office copy of same is Ex.CW1/23. In response to this show cause notice Mr. Vikas Pawa, Advocate on behalf of Mr. P.K. Sharma accused no. 2 informed that all the directors were in judicial custody for last 11 months and did not receive earlier communications of Sebi which is Ex.CW1/24. In response to this letter Sebi vide letter dt. 22.06.2000 advised the accused no. 1 that the letter of the company and the Hon'ble Supreme Court order did not make any reference to the arrest of Mr. Edwin and the

company was required to comply with the regulatory requirements failing which further action as mentioned in Sebi show cause notice dt. 12.05.2000 would be initiated. The said letter was returned undelivered with the report shifted from the address of the company at E-20, GK-I, New Delhi. The said letter is Ex.CW1/25 and envelope is Ex.CW1/26. In response to this letter Mr. Vikas Pahwa requested Sebi for a personal hearing to accused no. 1 as well as a chance to the said company to obtain certificate of registration for continuation of its business. The said letter is Ex.CW1/27. The accused no. 1 was advised by Sebi vide letter dt. 14.07.2000 that as on 30.06.2000, there were 5463 investor grievances with Sebi as against accused no.1 and therefore Sebi required accused no.1 to depute an officer to apprise Sebi regarding steps taken by it to redress these grievances. Vide this letter dt. 14.07.2000 the accused no.1 was further advised by Sebi to provide its latest registered office address. The said letter is Ex.CW1/28. Mr. Abhisar Chaudhary, Advocate on behalf of Vikas Pahwa, Advocate vide letter dt. 19.07.2000 informed Sebi that nobody was available to visit Sebi to attend the meeting fixed by Sebi and requested for further time. The said letter is Ex.CW1/29. As no information regarding either winding up of schemes of accused no.1 or any application for registration of its schemes were received by Sebi, the accused no.1 was forwarded the format of winding up and repayment report which had to be submitted with Sebi after closure of the schemes of accused no.1. The office copy of said letter is Ex.CW1/30. The accused no.1 vide letter dt. 17.08.2000 applied for registration of its schemes with Sebi and enclosed the details in Form A. As per this letter the yearwise collection of the company were: In financial year 1995-96 Rs.207.71 lacs, in 1996-97 Rs.3679.05 lacs and in 1997-98 Rs.8637.28 lacs. The company also submitted a brochure of its schemes. As per the

application Rowena Sharma, Arvind Mishra and Rajinder Prasad Hans were the directors of accused no. 1. The said application alongwith its annexures are collectively Ex.CW1/31. Accused no. 1 vide letter dt. 01.08.2000 requested Sebi for the details of complainants alongwith the addresses. The letter was signed by Mr. P.K. Sharma as director of accused no. 1. The said letter was received by Sebi on 21.08.2000 and in response there to the details of the complainants was provided to the accused no. 1 on 21.08.2000 itself and in this regard receiving was also given by Mr. Keshav Prasad. The said letter is Ex.CW1/32. The accused company vide letter dt. Nil received on 21.08.2000 forwarded a DD of Rs.25,000/- being the filing fee of application. The said letter is Ex.CW1/33. The accused no. 1 was advised by Sebi vide letter dt. 08.09.2000 to provide a declaration under the signature of all the directors regarding the schemes of the company being in the nature of CIS etc. Further it was also advised to provide a certificate from the statutory auditor certified that the amount raised by the accused under their CIS had been utilised for purpose mentioned in the scheme brochures etc. The said letter is Ex.CW1/34. The accused no. 1 company was further advised to submit information vide letter dt. 11.09.2000. The copy of same is Ex.CW1/35. The accused company vide letter dt. 16.09.2000 declaration from directors, certificate from statutory auditors etc. It further submitted that they will submit the amount of money mobilised within one week. The said letter is Ex.CW1/36. The accused no.1 was advised vide letter dt. 31.10.2000 various requirements which accused no.1 was required to comply for getting its scheme registered with Sebi. These requirements were informed to the accused no. 1 on earlier occasions as well but accused no.1 had not complied with the same. Apart from the above vide letter dt. 31.10.2000 the accused no.1 was informed that there were 5985 investor complaints

as on 15.10.2000 against accused no. 1 and further opportunity of personal hearing was given to accused no. 1 before Chairman Sebi on 09.11.2000 at 11.30 am. The said letter is Ex.CW1/37. With reference to the personal hearing held before Chairman Sebi on 09.11.2000 accused no. 1 was informed vide letter dt. 08.01.01 that their application for grant of registration had been rejected vide Sebi Chairman order dt. 21.12.2000. A copy of this order was also enclosed alongwith this letter. The company was also directed to wind up its existing schemes and repay to the investors in the manner provided under regulation 73 of Sebi CIS regulations, 1999. On completion of winding up the accused no. 1 was required to file WRR in the prescribed performa with Sebi. The letter is Ex.CW1/38 and order is Ex.CW1/39. Sebi received a complaint from Kuber Niveshkarta Kalyan Samiti, Shivganj, Shamli, Muzaffarnagar against accused company and its directors for non repayment of funds of investors. The said complaint is Ex.CW1/40. As the accused no. 1 failed to either get its schemes registered with Sebi or to file WRR in the prescribed format with Sebi within the prescribed period. The Chairman Sebi in exercise of the powers conferred u/s 11B of Sebi Act, 1992 and in terms of regulation 65 of regulations directed vide order dt. 25.07.01 the accused to refund the money collected under the schemes with returns which were due to the investors as per the terms of offer within the period of one month from the date of order failing which the actions as mentioned in the order were to follow. The said order was forwarded to the accused no.1 vide specific letter dt. 01.08.01. The order is Ex.CW1/41 and letter Ex.CW1/42. Sebi received a complaint from inspector incharge Police station Baihram Town informing that accused no.1 had opened its branch office at Baihrampur Orissa and attracted the investors with assurance of handsome return on the deposit made in their scheme. It was also informed that in the

year 1998 they had abolished their office and had fled away with the deposit of the public. The said letter is Ex.CW1/43. The accused no.1 company vide its letter dt. 29.08.01 requested for re consideration of registration by Sebi. The said letter is signed by Sh. P.K. Sharma as director of accused no.1 and the same is Ex.CW1/44. In response to this letter Sebi vide letter dt. 28.09.01 advised accused no.1 that as on 19.09.01 6363 investor complaints were pending and it was advised to provide Sebi the copy of orders mentioned in their letter dt. 29.08.01. This letter was received by Sh. Sunder Lal. The office copy of said letter is Ex CW1/45. Sebi received another complaint Kuber Niveshkarta Kalyan Samiti, Shivganj, Shamli, Muzaffarnagar against accused company and its directors for non repayment of funds of investors. The said complaint is Ex.CW1/46. The Sebi also received complaints dt. 08.10.01 and 15.04.02 from Kuber Niveshkarta Kalyan Samiti, Shivganj, Shamli, Muzaffarnagar and the said complaints are Ex.CW1/47 and Ex.CW1/48.

There are about 6000 investors complaints still pending against the accused no.1 company and these complaints are voluminous and therefore can be produced before this Court as and when required. Further Sebi sought information from ROC, Delhi regarding the directorship, further details about the accused no.1 vide letter dated 18.07.2012 and in response thereto ROC has sent its letter dt. 06.08.12 alongwith record of accused no.1 as available with ROC running into 638 pages and the said letter alongwith letter is Ex.CW1/49 (colly) (OSR). Till date neither the company has filed the winding up and repayment report (WRR) in the prescribed performa signed by all the directions and certified by its statutory auditor with Sebi nor it has complied with the directions issued by Chairman, Sebi u/s 11B of Sebi Act. The accused no.2 to 4 were the directors and persons incharge of the affairs of accused no.1 company.”

She was duly cross examined by ld. counsel for accused No.1 to 3.

16. Thereafter, CE was closed. Statement under Section 313 of accused No.2 and 3 was recorded wherein all the incriminating evidence which came on record was put to them, which they denied. Since accused No.2 (since deceased and proceedings qua him already stood abated) is not before this Court, therefore, his statement is not being discussed in detail but it shall be referred to wherever required. Even otherwise, the explanation and response to the questions put to accused no.2 and 3 are same.

17. In her statement recorded under Section 313 CrPC, accused No.3 had denied the case of complainant. She stated that on 13.08.1998, Hon'ble Delhi High Court passed an order in PIL W.P. No.3944/1998 whereby all the respondent companies including Kuber Mutual Benefits Ltd. and accused No.2 (P.K. Sharma), were restrained from disposing off their assets. She further stated that this order was given an unprecedented media coverage which resulted into a panic like situation and after reading such news headlines, the investors started thinking that perhaps the Kuber Group is going to be failed hence everybody started to withdraw their money and a long queues were made in front of the 450 offices of the Kuber Group throughout the country. Even in such circumstances, the Kuber Group kept on paying money to the investors even before maturity hence the entire equilibrium of the company was disturbed and in such circumstances when there is only an outgoing and no inflow of

the funds, no financial institution or a bank can survive, no matter how strong that bank or a financial institution is. Even the RBI/State Bank of India will not be able to survive if all together all the investors go to the bank and start asking for their money irrespective of their maturity. Whether can anyone be able to pay the entire money to the investors? When 90% of the money is blocked in loans and advances and in other assets. This was the only reason why Kuber Group has to face this problem after 13.08.1998. There was the only reason why Kuber group has to face this problem after 13.08.1998. There was not even a single paisa default before 13.08.1998 but it is the most pathetic and sad story about the Kuber Group which was a strong asset to the nation where more than 50000 employees were directly or indirectly working and a lot of economic and financial activities along with infrastructure activities were promoted by the company which resulted into a total collapse and nobody has gained anything after this debacle. Everybody has suffered whether it is the company, investors, or employees. Even in today's date, the Kuber Group is the most strongest company having the assets value more than 10 times of its liabilities but still all assets are attached by various courts, hands are tied and nothing can be done from last 16 years, the company is facing the litigation after litigation. Even the RBI has mentioned in their affidavit dated 31.08.1998 filed in PIL W.P. No.3944/98 in Hon'ble Delhi High Court that the assets of Kuber Group are more than the liabilities and the company is a solvent company. Accused No.3 has stated that she is a house wife and joined the company as director just to complete the quorum of company as

per company law. She was not an executive director and was not involved in day to day business of the company.

18. Accused No.2 and 3 led defence evidence.

19. Accused No.2 Sh. Pradyuman Kumar Sharma (since deceased) himself appeared in the witness box on behalf of A-1 to A-3 and examined himself as DW-1. Accused No.2 and 3 have also examined Sh.Sushant Sudan as DW-2 and Sh. R.K. Panchal as DW-3 in their defence.

20. DW-1 Sh. Pradyuman Kumar Sharma deposed as under:

“I am the accused no.2 in this matter and I am the Managing Director of the company accused no.1 and also the Chairman of M/s Kuber Group of Companies.

I was born in a Jamindar family in the year 1953. I completed my education from Lucknow and Meerut Universities. I completed my education i.e. B.Sc and LL.B in the year 1976. Thereafter I started my career as a banker and joined Syndicate Bank in 1973 and got an opportunity to establish the branch of Vijya Bank at Meerut in the year 1976. Till 1980, I served nationalized banks i.e. Syndicate and Vijaya Bank. In the year 1980 having enough of banking experience, I decided to float a banking institution which could have served the need of the northern India's people. I applied for a banking licence to the Reserve Bank of India (RBI) asking for a licence to the banking company. The name of my bank was already sanctioned/approved by the ROC which was named as Northern Bank of India Limited but it was subject to approval of RBI. When I approached to the RBI, they said that there is no need of fresh banking licence as after 1949

no fresh banking licence was being given and whatever is the need of banking, that will be fulfilled by the lead banks of the particular area but thereafter I kept on pursuing the matter with RBI. They have rejected and asked me to float a financial non banking institution. Thereafter I floated a partnership concern by the name of M/s Kuber Savings in the year 1980. I made my first corporate body in the year 1985 and thereafter I floated another non banking finance company by the name of M/s Kuber Auto General Finance & Leasing Ltd and M/s Kuber Mutual Benefit Ltd under Section 620A of the Companies Act and in the year 1994 I have floated one M/s Kuber Floritech Limited which was a 100% Export Oriented Unit (EOU) dealing in the cut flowers with the collaboration of a hollen based company called Flodec B.V. Floritech was a public limited company. Thereafter I did the research of teak plantation where I came to know that if we grow teak plants which is the most valuable wood for making furnitures and other items and if you grow for 20 years then almost 25 to 30 cubic foot wood can be produced out of one tree. When I studied this and consulted with my experts, I found it quite lucrative as a business proposition and as well as for the welfare of the nation as the plantation activities were always motivated an promoted by the Govt of India. The research which we studied are at Mark X1 (colly).

I started the plantation business in April, 1995. At that time, the plantation business was not covered by any Regulation either by RBI or SEBI. In May, 1997, Income Tax Department conducted a raid on my premises at various places and seized F.D.Rs worth rupees twenty crores approximately out of which the F.D.Rs of Kuber Plantation Ltd were to the tune of Rs.5.05 crores. A copy of panchnama prepared by raiding team of Income Tax is mark X2 (colly.). On 24.02.1998, I received a letter from SEBI in which they have asked us not to

accept any money under any Collective Investment Scheme (CIS) and submit certificate from a statutory auditor that no money as accepted after 24.02.1998. In response to that letter, I submitted the statutory auditor's certificate stating that no money has been received/collected after 24.02.1998. A copy of the said letter is already Ex.PW1/4. Till August 1998 the company had unblemished record and there was no complaint against the company for any kind of default. On 08.08.1998 a public action forum had lodged a PIL in Hon'ble Delhi High Court as WP 3944/98 titled as B.S. Sehgal Vs RBI whereas one of the company of M/s Kuber Mutual Benefit Ltd and myself in personal capacity were arrayed as respondent no.43 and 44 which were the last respondents. On 13.08.1998, the matter came on the board and an ex parte order was passed stating restraining all the companies which were arrayed as respondents in that PIL from disposing of their assets except in normal course of business. The order dated 13.08.1998 is mark X3. This order was given an unprecedented media coverage in all the leading newspapers of the country. Few such newspapers cuttings are mark X4 (colly). After reading this news, a panic was created among all the investors, agents and employees of the company and thereafter from 14.08.1998 itself all the investors started thronging to the company asking for their premature withdrawals thinking that perhaps the company is failed and they will not be able to retrieve their money from the company. Because of this, a run was created on the company which disturbed the entire equilibrium of the company. Thereafter just to save the company's reputation, the company liquidated all its prime assets and all the investments which were made in the F.D.Rs or in the stocks were kept on making the payments to the investors just to save its reputation. The persons who got their money were satisfied and who could not start lodging complaints in various forums/courts and lodged

FIR at police stations which resulted into a mega litigation and thousands of cases were lodged in various parts of the country. After this, when the people started exploitation of the company and the company was not even to fetch even 10% of their assets value and because of this reason we stopped desperate selling of the properties and thereafter a main case was lodged in Greater Kailash Police Station which is numbered as FIR No.126/99 investigated by EOW Cell Crime Branch. Thereafter, when liquidity problem arise, the EOW Cell arrested me, my wife and my brother and thereafter I remained in judicial custody for approximately 11 months. In the meantime, the police officials moved an application for the attachment of all the properties belonging to M/s Kuber Group of Companies including M/s Kuber Planters Limited's property under Section 102 Cr.PC whereas the then Ld MM Shri K.S. Mohi passed the order and attached 23 properties of M/s Kuber Group of Companies including the property of Kuber Planters Ltd u/s 102 Cr.PC. Copy of said order dated 19.08.1999 is mark X5. Myself and my family were released only after the intervention of Hon'ble Apex Court on 05.05.2000. The order of Hon'ble Apex Court is mark X6 (colly). In WP No.3944/98 the Hon'ble High Court asked for a status report of the company on 31.08.1998 where the RBI filed an affidavit alongwith a calculation of assets of the company whereas it was found that assets were more than the liabilities. A copy of said calculation of assets is mark X7. On 24.09.2002, A DB of Hon'ble Delhi High Court passed a detailed order in abovesaid writ petition stating that the petitioners of the PIL had unnecessarily pleaded Kuber Group of Companies which has created incalculated damages and clock can not be turned back. A copy of said order is mark X8. In the said order, the Hon'ble DB has also observed that the RBI and the SEBI did not find anything against M/s Kuber Group of Companies and no stern action was required against M/s Kuber Group of

Companies. On the basis of this order, the name of the company was deleted from the array of respondents of that PIL and it was stated that the PIL would not survive qua respondents 43 and 44 i.e. myself and the company. The company was exonerated from all the charges which were the route cause of the debacle of the Kuber Group of Companies. In the meantime, there were another proceedings started in Maharashtra in Mumbai under the Maharashtra Protection of Investors of depositors Act, 1999 (MPID Act) where the competent authority of Maharashtra was the officer incharge of all such companies which were falling under the MPID Act. On 10th of August 2000 and 16th August 2000 the competent authority applied for the attachment of all the properties at Maharashtra including the properties of Kuber Planters Limited which was located at Village Pahur, Tehsil Roha, District Raigarh, Maharashtra. This was the plantation site of M/s Kuber Planters Ltd where the company had planted more than four lacs trees in the area of 258 acres. All these plants were planted in the year 1995. The attachment order of competent authority was duly passed by the Hon'ble Governor of Maharashtra and same was confirmed by the MPID Court on 10.08.1998. A certified copy of the said order is Ex.DW1/1. By this order, four properties situated in Navi Mumbai were attached out of which Kuber Classic and Kuber Embassy Projects are the properties of M/s Kuber Planter was also attached vide said order. Moreover the rest of the property in Maharashtra has also been attached by the MPID Court.

The total value of the plantation site which was attached by the competent authority on 10.03.2000 was Rs.26.54 crores. The competent authority was in total control and exercise over the money and the properties attached by it under MPID Act. Certified copy of the same is Ex.DW1/2.

Today, I have brought the certified copy of order dated 19.08.1999, copy of which is already marked as X5. The same is now exhibited as Ex.DW1/3.

Besides above said properties which are attached by the MPID Court and other Courts/Authorities, the company had planted more than ten lacs saplings of teek trees in various parts of the country like in Dehradun, Haridwar Road, at Bihari Garh, Foothills of Dehradun and at Binola, District Gurgaon and in the remaining part of the land at village Javta and Pahun, Maharashtra. These trees were growing in a healthy manner but after attachment orders of competent authority of Maharashtra in MPID Court and the other courts and authorities, the control of the properties were under them and they were supposed to take care of the plants and the trees and the saplings which were planted in various parts of the country. It was only in the year 2005 when by the order of Hon'ble High Court of Mumbai and Court Receiver was appointed to evaluate all the properties. At that time, I accompanied with the Court Receiver to the plantation site and found that all the trees which were almost ten years old were cut down by the local villagers, Adivasis and the unsocial elements. It was a shocking news for me and thereafter I started taking care of the trees/plants myself with my own resources thinking that ultimately it will be a loss of investors if the trees are not given care. Few photographs in this regard (both old and new) are marked as X-8 (colly). Besides this, company; had also given loans and advances who had invested their money in the projects of the company with back to back security of their properties but those projects were also attached by the MPID Court. In the year 2000 itself the company have almost 18 crores rupees in the banks as admitted in the report of inspection of auditor appointed by SEBI, already exhibited as

Ex. PW1/7. The total value of my all assets which were not in my control and were in the possession of attachment under the various courts and government authorities were valued more than the liabilities which I have in the year 2000 itself. Hence, it was not in my hand to refund the entire money to the investors as asked by the Chairman SEBI vide letter in the year 2001. I had already informed SEBI on 29.08.2001 with my letter where I had given the entire information to SEBI on page no.2 of the letter in para 2,3, 4 and 5. In spite of having the entire information, the SEBI asked the accused no.1 company to make the repayment to all the investors within one month's time which was highly impossible and a supervening impossibility.

I started this business in the year 1994 as a proprietor concerned in the name of Kuber Planters. Few certificates (coloured photocopies) issued in the year 1994 are Ex.DW1/4 (colly) (OSR) (objected to). Despite the attachments by the different courts and authorities, I have settled more than 15000 certificate holders who approached the company for repayment of their certificates. The photocopies of said certificates and list of the investors who have been paid by the company is Ex.DW1/5 (colly) (OSR). I have also entered into an agreement with the purchaser of trees for 20 years. The purchasers who encashed their certificates were paid and who did not approach to the company means that they were interested in trees after 20 years i.e. period of certificate. Till 1999 SEBI had never issued any notice or not published any general notice in any newspaper for the compliance of the Regulations for the prohibition of the scheme run by the company accused no.1. I have not been able to comply because the circumstances were beyond my control due to the above said reasons and moreover the complaint to prosecute me and the company, has been filed malafidely because they

are well aware that all the properties are attached by the various courts and authorities before filing this complaint and this is the reason that they have not examined the authorized person at the time of the complaint.”

He was duly cross examined by ld. counsel for complainant.

21. DW-1 was re-examined on 21.05.2015 wherein he stated as under:

“The accused no. 1 was firstly incorporated on 29.07.1993 by the name of Kuber Plantation Ltd. The copy of the incorporation is marked as Mark A/1 and the certificate of commencement of business has been issued by the ROC Delhi and Haryana on 13.11.1993 which is marked as Mark A/2. Thereafter I started my plantation scheme in 1993 itself.

That after the order passed by Hon'ble High Court of Delhi 13.08.1998 few FIR has been registered whereas main FIR bearing No. 126/1999, PS GK investigated by Crime Branch EOW Cell where all my properties including the property of plantation has been attached by the Court U/s 102 Cr. P.C. I have moved certain applications for the release of the properties for the purpose of re-payment to the investors, right from 1999-2000 itself the certified copies of the applications moved by me and the copy before the Ld. CMM/South East and before the various Courts where this FIR 126/1999 was pending before his assigned to Ld. CMM/ South East are Ex. DW1/6 (Colly), Ex. DW1/7 (Colly), Ex. DW1/B (Colly). Ex. DW1/9 (Colly), Ex. DW1/10 (Colly), Ex. DW1/11 (Colly), Ex. DW1/12 (Colly), Ex. DW1/13 (Colly), Ex. DW1/14 (Colly), Ex. DW1/15 (Colly), Ex. DW1/16 (Colly).

Few properties which was attached by the criminal court the copy of the same has already been Ex. DW1/3 out of which some are situated in Village Binola, Bilaspur, District, Gurgaon were acquired by the State of Haryana for the purpose of establishing a different University and accordingly the preliminary compensation of Rs. 87 Crores (approx) has been granted by Land Acquisition Officer and same has been transferred to the Land Acquisition Court, Gurgoan by the SLO. I have moved the application before the ADJ, Gurgoan which is the Court of Land acquisition for the release of Rs. 17.5 Crore for the purpose of repayment to the investors in MPID Court Mumbai same is Ex. DW1/17 (Colly).

Further we have applied several applications for the purpose of repayment to the investors in MPID Court Mumbai and Hon'ble Bombay High Court. Certified copies of those applications Ex. DW1/18 (Colly), Ex. DW1/19 (Colly). The application filed before the Bombay High Court on 20.11.2003 and 21.11.2013 are marked as Mark A3 (Colly) and the petition dated 17.07.2003 and 22.07.2013 filed in Hon'ble High Court of Bombay is marked as Mark A4 (Colly). I have tried as a Managing Director my level best to reimbursement the investors and since beginning I have given various applications to the Courts for the purpose release and making the repayments to the investors, under which the properties of planters/Kuber Group are attached. The Kuber Planters Ltd. and Planatation Ltd. is having more asserts than its liabilities and is a still is in a position to make the repayments to all the investors provided the attached properties are released beside this the Kuber Plantation Ltd. has already planted more trees than the units sold by the company. The company have sold the trees and not floated any CIS and there is no complaint pending against the Kuber Plantation Ltd./ Kuber Planters Ltd. before the SEBI as on date.

He was duly cross examined by ld. counsel for the complainant.

22. DW-1 was again re-examined on 07.10.2026 wherein he stated as under:

“In the year of 1993, July, Kuber Plantation Limited was incorporated. Certificate of commencement of business was issued in November, 1993, thereafter, the plantation activities / business was started. Initially, the plantation business was started with Rose plantation. Most of the plants was imported from Swaziland and Holland. Some plantations were purchased from Bangalore and other parts of the Country. The sanction letter dated 07.11.1994 issued by the Ministry of Agriculture is Mark A5. The import / purchase bills and the relevant documents i.e. controlled climate (Green House Plant) are Ex. DW1/20 (Colly) (OSR). All these plants were grown under the controlled climate and the green houses which were imported from France and Izrail. All the bills of lading of imports are for the activities of plantation, I have purchased huge land by 19 registered Sale Deeds. The Copy of the Sale Deeds bearing Nos. 2548, 2545, 2553, 2555, 6750 are marked as Mark A6 to Mark A10. Letter dated 16.02.1993 is Mark A11. Rest 14 registered Sale Deeds bearing Nos. 1259, 2028, 2029, 1260, 2544, 2552, 2550, 2551, 2549, 6117, 6118, 3851, 4154 and 6119 are Ex. DW1/21 (Colly) (OSR).”

He was duly cross examined by ld. counsel for the complainant.

23. DW-2 is Sh. Sushant Sudan, Deputy Director, Department

of Industrial Policy and Promotion, Udyog Bhawan, New Delhi. He has produced the file containing certified true copy of letter dated 16.02.1994 relating to M/s. Kuber Plantation Ltd. and office typed copies of letters dated 23.05.1994, 18.10.994 and 17.04.1995. He has proved the copy of the aforesaid letters as Ex.DW2/1 to Ex.DW2/4 respectively.

24. DW-3 is Sh. R.K. Panchal, Assistant, Regional Plant Quarantine Station, Rangpuri. He has proved the letter of authority issued by Dr. D.C. Rajak dated 24.10.2018 in his favour to depose in this case as Ex.DW3/A. He has also proved the letter issued by Sh. Udai Veer Kulshrest, Dy. Director (E), Ministry of Agriculture dated 07.11.1994 as Ex.DW3/B.

Arguments on behalf of complainant

25. Sh. Ashish Aggarwal, Id. counsel for complainant/SEBI had argued that accused No.1 company was incorporated on 21.04.1995 and by then, Section 12(1B) of SEBI Act was already introduced (w.e.f. 21.01.1995). He had argued that as per Section 12(1B) of SEBI Act, there was a complete bar on running CIS without obtaining a certificate of registration. He had further argued that since there was no CIS Regulations in force at that time, accused No.1 company could not have floated any scheme and the same was done in violation of Section 12(1B) of the Act. Id. counsel had further argued that the documents submitted by accused No.1 company clearly show that it was running a Collective Investment Scheme and accused No.2 to 4 were the directors of accused no.1 company and had raised an aggregate

amount of nearly Rs.87 crores from the general public. Ld counsel for the complainant had argued that it has been proved that despite passing of an order by SEBI in respect of winding up of scheme and repaying the investors, accused persons did not take any steps and no response was ever filed by them. Ld. counsel for the complainant had further argued that the fact that accused no.3 was the director of accused No.1 company stands proved from ROC record which has already been exhibited during testimony of CW-1. He had further argued that the evidence led by complainant and cross examination of DW-1 clearly establishes that accused No.3 was the director of accused No.1 company and was responsible for conducting day to day affairs. He had further submitted that the documents relied upon by complainant's witness clearly establishes the case of the complainant and proves the guilt of the accused persons beyond any reasonable doubt. He had further argued that accused no.1 company and accused No.3 being its director are liable to be convicted for violation of provisions of SEBI Act and CIS Regulations.

Arguments on behalf of Accused No.1 and 3

26. Mr. Vikas Pahwa, Id. Senior Counsel for accused no.1 and 3 had argued that the accused persons were carrying collective investment scheme prior to the commencement of Securities Laws (Amendment) Act, 1995 w.e.f. 25.01.1995 and therefore, no violation of Section 12(1B) of SEBI Act has been committed in view of the proviso of said Section. Ld. Senior Counsel further argued that no prior statutory inquiry was conducted by

the Board before passing orders under Section 11B of SEBI Act. Ld. Senior Counsel for accused No.1 and 3 had further argued that SEBI blindly relied upon the auditors report prepared by M.Mittal and Aggarwal without inquiring into the facts and circumstances developed after the preparation of the report and before passing of the orders in respect of the refund of money and winding up the scheme. He had further argued that even the auditor who prepared the Special Auditor Report was not examined by the complainant and therefore that report cannot be read in evidence. Ld. Senior Counsel for accused No.1 and 3 had argued that there is no violation of Regulation 68 of CIS Regulations as it makes mandatory for the existing CIS to make an application for registration of the scheme which was duly done by the accused company. Similarly, in respect of Regulation 74 of CIS Regulations, it was argued that the said regulation can be invoked only when the existing CIS is not desirous of obtaining provisional registration. He had further argued that accused no.1 company did apply for provisional registration and hence, there is no violation of this regulation.

27. Ld. Senior Counsel for accused no.1 and 3 further argued that the alleged violation of Section 11B of SEBI Act and Regulation 73 of CIS Regulations were neither deliberate nor intentional. He had argued that accused persons exercised all due diligence to prevent the commission of violation but it was beyond their control and was inevitable. Ld. Senior Counsel had further argued that accused No.2 and 3 were in J/C for eleven months from 04.06.1999 to 06.05.2000. The offices of Kuber

Group were ransacked in the entire country. The offices were sealed by EOW and various other agencies. Ld. Senior Counsel for accused No.1 and 3 had argued that after release of accused No.2 and 3 from J/C, sincere endeavours were made by them to obtain the certificate of registration from SEBI and following steps were undertaken:

- (i) Replied to the SCN issued by SEBI on 30.05.2000 informing them about the incarceration of the Directors and non-receipt of the communications sent by them during that period.
- (ii) Requested SEBI for a personal hearing for applying of registration in terms of the Act vide letter dated 29.06.2000.
- (iii) Applied for registration of CIS on 17.08.2000.
- (iv) Requested to provide details of complainants alongwith their addresses.
- (v) Applied for provisional registration on 21.08.2000.
- (vi) Applied for provisional registration on 16.09.2000.
- (vii) Even after the rejection of the application, a request was made to reconsider the issue of registration on 29.08.2001 with the copy to the PM/Finance Minister/Chairman, SEBI etc. to intervene.

Ld. Senior Counsel for accused No.1 and 3 has relied upon *P.S. Chaudhary vs. SEBI SLP (Crl.) 12867/2014* and *BPL Ltd. vs. SEBI 2002 SCC Online Sat 15* in support of his above contentions.

28. Mr. Vikas Pahwa, Ld. Senior Counsel for accused No.1 and 3 had argued that after rejection of the application for registration, the direction was made by SEBI to refund all the

depositors. He had argued that though the accused persons did not succeed in complying with the directions of winding up of CIS but that was due to the reasons beyond their control. It was argued that prior to the commencement of CIS Regulations, 1999 and before filing of the application for registration certificate on 31.03.2000, the following things happened:

- (i) On 09.05.1997 Income Tax Department seized Fixed Deposit worth Rs.5 crores (Approximately) belonging to the accused company.
- (ii) On 13.08.1998, Hon'ble DHC in C.W. No.3944/1998 passed an ex parte order restraining M/s. KMBL from selling their assets except in the normal course of business.
- (iii) On 04.06.1999, accused No.2 P.K. Sharma (since deceased) was arrested in case FIR No.126/1999.
- (iv) On 17.07.1999, accused No.3 was arrested in Case FIR No.126/1999.
- (v) On 19.08.1999, the then Ld. MM, New Delhi in the matter titled as 'State vs. P.K. Sharma' on the request of IO of the case FIR No.126/1999 passed an order under Section 102 CrPC attaching 23 properties of Kuber Group of Companies.
- (vi) On 10.03.2000 the MPID Court of Maharashtra attached five major properties of Kuber Group of Company and these properties are continued to be attached till date. Despite that, accused company has initiated the repayment to investors.

29. Ld. Senior Counsel for accused No.1 and 3 had argued that after commencement of CIS Regulations, 1999 i.e. 15.10.1999 and before the last date of filing the application for registration certificate on 31.03.2000, the following things

happened:

- (i) The Hon'ble Supreme Court vide order dated 06.05.2000 granted bail to accused no.2 and 3.
- (ii) On 16.08.2000 the Special Court of MPID (Maharashtra Protection of Interest of Depositors) Act, 1999 attached the properties of Kuber Group, including the properties of accused No.1 company.
- (iii) The Hon'ble Delhi High Court vide order dated 24.09.2002 exonerated Kuber Group's principal company.

30. Ld. Senior Counsel for accused No.1 and 3 had argued that accused persons made serious endeavours to repay the investors and took the following steps in the last many years:

- (i) On 26.07.2001 an application was filed before MPID Court for approval of scheme proposed by accused for repayment of deposits of investors.
- (ii) On 30.03.2005 another application was filed before MPID Court for approval of scheme proposed by accused for repayment of deposits of investors.
- (iii) On 07.02.2012 an application for release of property in the name of accused No.1 and Kuber Floritech was filed in FIR No.126/1999.
- (iv) On 19.08.2013 an application seeking release of 6.35 bighas of land was filed in FIR No.126/1999.
- (v) On 17.10.2013 an application seeking release of property in the name of accused No.1 was filed in FIR No.126/1999.
- (vi) On 28.10.2013 an application was filed before Id. ADJ, Gurgaon for release of Rs.17.5 crores.
- (vii) On 29.08.2014 an application for release of payment was

filed in FIR No.126/1999.

31. Ld. Senior Counsel for accused no.1 and 3 had argued that the accused persons did not make any willful or deliberate delay in refunding the deposits and therefore, accused No.3 falls within the purview of proviso to Section 27(1) of SEBI Act. He had further argued that the averments against accused no.3 are not explicit. It has not been specifically pleaded that how she was responsible for conducting day to day affairs of accused no.1 company in the business for which she cannot be held guilty for the offence charged of. He had further argued that accused No.3 was one of the directors of accused No.1 company but she was not the incharge and was not responsible for the conduct of the business of company. She was only a housewife and was made the director because her husband i.e. accused No.2 Pradyuman Kumar Sharma (since deceased) was the main person in the company. It was further argued that accused No.3 has been given discharge by the Special Judge, Mumbai in MPID case. In support of this contentions, Id. Senior Counsel has relied upon *N.K. Wahi vs. Shekhar Singh & Ors. (2007) 9 SCC 481*, *S.M.S. Pharmaceutical Ltd. vs. Neeta Bhalla & Anr. (2005) 8 SCC 89*, *S.S. Thakur vs. SEBI 2014 SCC Online Del 2749* and *Rashima Verma vs. SEBI 2009 SCC Online Del 106*.

32. Ld. Senior Counsel for accused no.1 and 3 had argued that word 'contravention' used in Special Act is willful and deliberate act and cannot be vicarious. He had further argued that *Mens rea* is *sine qua non* for criminal offence which the complainant has failed to prove in the present case. In respect of this proposition,

ld. Senior Counsel had relied upon *Nathulal vs. State of M.P. 1965 SCC Online SC 31*, *Guljag Industries vs. CTO (2007) 7 SCC 269*, *SEBI vs. Cabot International Capital Corp. 2004 SCC Online Bom 180* and *Reliance Industries Ltd. vs. SEBI 2023 SCC Online Sat 1019*.

33. Sh. Vikas Pahwa, ld. Senior Counsel for accused no.1 and 3 had submitted that accused persons have exercised all due diligence to prevent the commission of offence and violation of regulations and therefore, they cannot be held liable to any punishment provided in SEBI Act and therefore, they be acquitted.

Arguments in rebuttal by complainant

34. Ld. counsel for the complainant had argued that company is different from proprietorship concern. It is the admitted case of accused no.1 company that it was incorporated on 21.04.1995. He argued that the arguments addressed by ld. Senior Counsel for the accused no.1 and 3 to the effect that erstwhile entity of accused no.1 was already running CIS Scheme, therefore, proviso to Section 12(1B) of SEBI Act is applicable, cannot be accepted. He had further argued that the special audit report which was prepared by M/s. M.Mittal and Aggarwal was never challenged by the accused persons at any point of time and therefore, no objection can be raised regarding the same now. Ld. counsel for the complainant had further argued that no prior inquiry is required to be conducted before issuing any order under Section 11B of SEBI Act. Ld. counsel for the complainant had further argued that the complainant has proved its case

beyond any doubt and therefore, accused No.1 and 3 be convicted for violation of provisions of SEBI Act and CIS Regulations.

Analysis, Reasoning & Findings

35. I have heard ld. counsel for SEBI and ld. Senior Counsel for accused No.1 and 3. I have given thoughtful consideration to the records of this case.

36. On scanning the documents, it is noted that letter dated 12.01.1998 Ex.PW1/1 (colly.) was addressed by accused no.1 company to SEBI for submitting the details/information relating to existing CIS in pursuance of the public notice of the SEBI dated 19.09.1997 and its press release dated 26.11.1997. Memorandum and Articles of Association were also filed alongwith this letter. The factum of sending this letter alongwith documents to SEBI is not disputed by accused persons. During his cross examination, DW-1 (accused no.2) has admitted the Memorandum of Association and Articles of Association of accused no.1 company and same were exhibited as Ex.DW1/PX1. In the Articles of Association, Certificate of Incorporation dated 21.04.1995 and Certificate of Commencement of business dated 04.05.1995 have been annexed. DW-1 further admitted in his cross examination that accused no.1 company was incorporated on 21.04.1995 i.e. after coming into force of Section 12(1B) of SEBI Act (w.e.f. 25.01.1995). Accused No.1 being a company incorporated under Companies Act, 1956 is a separate legal entity distinct from its members or its predecessor entity. The moment a company is

formed, it cannot be associated with any of its prior entity. The main objects and the ancillary objects of the company have to be mentioned in the Memorandum and Articles of Association. The objects of the company have been clearly given in the Memorandum of Articles of Association which are as under:-

“1. To carry on the business of planters, growers, cultivators and estate owners in India or else where of all types and varieties of trees, plants and to develop, run, maintain and protect forestry, orchards, gardens, nurseries, agriculture farms. horticulture, sericulture lands, and do all jobs for research and development of fertility, usefulness and also to carry on the business of production, manufacture, preparation, processing, assembling finishing, packing, distribution and to buy, sell, purchase, export, import, transact, deal and trade in all types of seeds, saplings. wood, wooden products, agriculture products, fisheries, poultry, sheep, cattle, dairy and all other products of land and water.

2. To undertake mass plantation on deforested land with an aim of large scale afforestation through sponsorship and public participation.

3. To grow, take on lease, acquire and develop any lands or estates to deal in plantations any forest and to process like timber, wood, plywood, and all kinds of wood and to make products wherein wood is a constituent part and to design, develop, fabricate any products involving the substantial use of wood, and to dispose of, buy and deal in the said products and other agro products.

4. To carry on the business of or to aid, assist, promote, develop and provide all the facilities, infrastructure, provisions, agricultural implements and equipment and machineries and all other allied services and things like irrigation, electricity and others for development of agriculture, agricultural

produce and products and all kinds of trees, plants, herbs, vansapati, vegetables, fruits sericulture products horticulture products and their uses and utilities.”

37. A careful reading of the main objects for which the company was incorporated clearly shows that it was formed for the purpose of carrying out the plantation business/running Collective Investment Scheme. As on the date of its incorporation, Section 12(1B) of SEBI Act had already come into force (i.e. w.e.f. 25.01.1995) which prohibited any person from carrying out any CIS without obtaining a certificate of registration from the Board in accordance with the regulations. It is worthwhile to note here that as on 21.04.1995 when the company was incorporated, there were no CIS regulations in force. Therefore, the accused No.1 company was completely prohibited from carrying on any CIS. Even if it is presumed that accused no.1 company, in its erstwhile form i.e. as a proprietorship concern, was carrying on the CIS prior to coming into force of Section 12(1B) of SEBI Act, this fact has no significance. On the date of its incorporation i.e. on 21.04.1995, Section 12(1B) was clearly applicable to accused no.1. Even otherwise, while applying for registration vide letter Ex.CW1/31 before SEBI by accused No.1 company, it has been categorically stated that “the company was incorporated on 21st April, 1995 and got the certificate for commencement of business on 4th May, 1995 and that they had started the scheme in the financial year 1995-96 when there was no guideline from the government in this regard”. At that point of time, accused No.1 company never took the stand that they were already running a CIS under the

name & style of Kuber Planters which was a sole proprietorship concern and there was no violation of Section 12(1B) of the said Act. This Court is unable to agree with the argument led by learned Senior Counsel for accused No.1 and 3 regarding applicability of proviso to Section 12(1B) of SEBI Act, to accused no.1 company.

38. Now, it is to be seen whether accused no.1 company was running a CIS. It is proved from the very fact that accused no.1 company applied for registration of CIS vide letter Ex.CW1/31. Alongwith the letter Ex.CW1/31, Annexure-B was filed wherein accused no.1 company had given year wise collections of the company/funds raised from public, which is as under:-

<i>“Financial year</i>	<i>Rs. In Lacs</i>
<i>1995-96</i>	<i>207.71</i>
<i>1996-97</i>	<i>3679.05</i>
<i>1997-98</i>	<i>8637.28”</i>

39. In the said Annexure-B, it was also stated that the company launched its first and open ended scheme titled as Kuber Dhanvariksha in the financial year 1995-96. This fact of running the CIS and mobilizing an amount of Rs.86.37 crores is also admitted in response to question no.24 by accused no.3 in her statement under Section 313 CrPC. Therefore, it stands proved beyond any doubt that Section 12(1B) of SEBI Act was applicable to accused No.1 company and it was not authorised to float any CIS on the date of its incorporation but in violation of Section 12(1B) of SEBI Act, accused No.1 company floated the CIS and mobilized a total amount of Rs.86.37 crores during the financial year 1995-96 till 1997-98.

40. It further stands proved on record that the application filed by accused no.1 company for registration was rejected by SEBI vide its order dated 21.12.2000 which is Ex.CW1/39. The said order was duly communicated to accused no.1 as well as to learned Senior Counsel vide letter Ex.PW1/38. In the very same order Ex.CW1/39, accused no.1 was directed to wind up its scheme and repay the investors in the manner provided under Regulation 73 of CIS Regulations. On failure of accused no.1 to file the winding up and repayment report, SEBI vide its order passed under Section 11B of SEBI Act dated 25.07.2001 Ex.CW1/41 directed accused No.1 company to refund the money collected under the scheme with returns which were due to the investors within one month from the date of order. The order under Section 11B of SEBI Act was an appealable order before Securities Appellate Tribunal (SAT), but same was never challenged by accused persons and it attained finality. Certainly, the directions of SEBI Act to wind up the schemes after repaying the investors and filing the winding up report was not complied with by the accused persons.

41. Ld. Senior Counsel for accused No.1 and 3 had raised several defences in order to say that accused no.1 and 3 have not committed any offence. The said arguments shall be dealt with one by one. During the course of arguments, he argued that no prior inquiry was conducted itself by SEBI before issuance of the order under Section 11B of SEBI Act and SEBI was not authorised to get any special audit conducted through a third

party. In order to meet the said arguments of learned Senior Counsel for accused No.1 and 3, it is relevant to look into Section 11B of SEBI Act:

‘ 11B. Power to issue directions and levy penalty.

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

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

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

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

it may issue such directions,—

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

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

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

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

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

loss averted by such contravention.]”

42. A plain reading of Section does not indicate at all that the SEBI has to statutorily conduct an inquiry itself before passing any order under this Section. Further reading of the said Section shows that Section 11B has been introduced in addition to Section 11 of SEBI Act. Section 11 describes the functions of the Board. SEBI is a regulatory body and SEBI Act has been framed to provide for the establishment of a Board to protect the interests of investors in securities and to promote the development of, and to regulate, the securities market and for matters connected therewith or incidental thereto. Section 11(2) of SEBI Act provides the measures which the Board may take to protect the interest of investors. Section 11(3) of SEBI Act vests the Board with the powers of a Civil Court which it has while trying a suit in respect of following matters:-

*“(i) the discovery and production of books of account and other documents, at such place and such time as may be specified by the Board;
(ii) summoning and enforcing the attendance of persons and examining them on oath;
(iii) inspection of any books, registers and other documents of any person referred to in section 12, at any place;
(iv) inspection of any book, or register, or other document or record of the company referred to in sub-section (2A);
(v) issuing commissions for the examination of witnesses or documents.”*

43. The aforesaid powers empowers the Board for issuance of commission for examination of witnesses or documents. In the considered opinion of this Court, the SEBI was well within its powers to order for a special audit of the accused no.1 company

through an independent auditor. Section 11B of SEBI Act does not stipulate anywhere that inquiry, if any, has to be conducted by SEBI itself through its own officers. Therefore, this argument of learned Senior Counsel for accused No.1 and 3 is misconceived and is hence, turned down.

44. Learned Senior Counsel for accused no.1 and 3 has further argued that the special audit report Ex.PW1/7 (Colly.) does not stand proved as the special auditor was not summoned for deposition by the complainant. In this regard, reference is hereby made to the testimony of the complainant's witness i.e. CW-1 Ms. Versha Agarwal. She, in her examination-in-chief, had stated as under:

“XX XX XX

Sebi vide letter dt. 03.07.98 informed the accused no. 1 that in exercise of powers under Sebi Act, the Chairman Sebi had appointed M/s. M.Mittal & Aggarwal as Auditors and copy of said letter is Ex.PW1/5.”

45. No suggestion was put to CW-1 disputing the receipt of this letter by accused No.1 company. Moreover, the special audit report specifies the nature of assignment as *“Special Audit of Collective Investment Schemes as per Terms of Reference mentioned in letter No.15/81/PLANTATION/98-NRO/5269, Dated 3rd July 1998 issued by SEBI”*. This shows that the moment order of special audit was passed, accused no.1 was duly notified. It stands proved that accused no.1 company was duly informed about appointment of M/s. M.Mittal & Aggarwal as special auditor.

46. The accused persons have never disputed the special audit report at any point of time. It is not at all the case of the accused persons that they had not received the same or they did not accept the same. It is pertinent to mention here that not even a single suggestion was given to complainant's witness stating that the said report was incorrect or was manufactured. Accused persons had the knowledge of special audit being conducted as the documents were called by special auditor from accused no.1 company only. The letter dated 12.10.1998 Ex.PW1/10 (Colly.) addressed by accused no.1 company to SEBI clears the same. At point-No.4 of the said letter, there is a reference to special audit conducted by M/s. M.Mittal & Aggarwal wherein it has been stated that accused no.1 fully cooperated the said audit firm. Only the portion of the audit report wherein it was stated that some deposits were accepted upto the end of 01.03.1998, was disputed. Rest of the observations made in audit report were never challenged either by any separate communication or by any letter written by accused no.1 company in response to some other communication of SEBI. It is further observed that this order of appointing special auditor or the special audit report was never challenged before any competent authority. It was only during recording of statement of accused no.2 and 3 under Section 313 CrPC, they disputed special audit report and its receipt. No evidence was led to this effect. Merely denying the report in the statement of accused for the first time and then building the argument qua the same during final arguments is of no avail.

47. It is not the case of the accused persons that the special audit report is not inherently admissible in evidence. Special

audit report submitted by M.Mittal & Aggarwal with SEBI was exhibited as Ex.PW1/7 (Colly.) by CW-1. However, no objection to its mode of proof was ever taken by Id. counsel for accused persons while the said report was exhibited in her examination-in-chief. During the course of final arguments, the objection to the mode of proof has been taken for the first time by arguing that the special auditor was not summoned to prove the report.

48. The law with respect to objection regarding mode of proof was dealt with in ***R.V.E. Venkatachala Gounder vs. Arulmigu Viswesaraswami & V.P. Temple and Another (2003) 8 SCC 752*** wherein the Hon'ble Supreme Court observed as under:

“The learned counsel for the defendant-respondent has relied on The Roman Catholic Mission Vs. The State of Madras & Anr. AIR 1966 SC 1457 in support of his submission that a document not admissible in evidence, though brought on record, has to be excluded from consideration. We do not have any dispute with the proposition of law so laid down in the abovesaid case. However, the present one is a case which calls for the correct position of law being made precise. Ordinarily an objection to the admissibility of evidence should be taken when it is tendered and not subsequently. The objections as to admissibility of documents in evidence may be classified into two classes:- (I) an objection that the document which is sought to be proved is itself inadmissible in evidence; and (ii) where the objection does not dispute the admissibility of the document in evidence but is directed towards the mode of proof alleging the same to be irregular or insufficient. In the first case, merely because a document has been marked as 'an exhibit', an objection as to its admissibility is not excluded and is available to be raised even at a later stage or even in appeal or revision. In the latter case, the objection should be taken before the evidence is tendered and once the document has been admitted in evidence and marked as an exhibit, the objection that it should not have been admitted in evidence or that the

mode adopted for proving the document is irregular cannot be allowed to be raised at any stage subsequent to the marking of the document as an exhibit. The later proposition is a rule of fair play. The crucial test is whether an objection, if taken at the appropriate point of time, would have enabled the party tendering the evidence to cure the defect and resort to such mode of proof as would be regular. The omission to object becomes fatal because by his failure the party entitled to object allows the party tendering the evidence to act on an assumption that the opposite party is not serious about the mode of proof. On the other hand, a prompt objection does not prejudice the party tendering the evidence, for two reasons: firstly, it enables the Court to apply its mind and pronounce its decision on the question of admissibility then and there; and secondly, in the event of finding of the Court on the mode of proof sought to be adopted going against the party tendering the evidence, the opportunity of seeking indulgence of the Court for permitting a regular mode or method of proof and thereby removing the objection raised by the opposite party, is available to the party leading the evidence. Such practice and procedure is fair to both the parties. Out of the two types of objections, referred to hereinabove, in the later case, failure to raise a prompt and timely objection amounts to waiver of the necessity for insisting on formal proof of a document, the document itself which is sought to be proved being admissible in evidence. In the first case, acquiescence would be no bar to raising the objection in superior Court.”

49. In the aforesaid judgment, the Hon’ble Supreme Court clearly made a distinction between the objections raised as to the admissibility of the documents and the objections raised towards the mode of proof. There is no dispute to the fact that in the present case the objection is only to the mode of proof. The reasons as to why the objections to the mode of proof ought to be taken at the very first instance have been explained in the aforesaid judgment. Hon’ble Supreme Court has observed that

when the objection as to the mode of proof is raised at the very first instance, the said objection enables the party tendering the evidence to cure the defect. It has further been observed that the omission to object to the mode of proof becomes fatal because by this failure the party entitled to object allows the party tendering the evidence to act on the assumption that the opposite party is not serious about the mode of proof. Once the said objection is not taken at the first instance, like in the present one, it cannot be raised later on. At this stage, it is pertinent to mention here that the judgment of ***R.V.E. Venkatachala Gounder*** (Supra) came to be passed in a civil case, however, in ***Sonu @ Amar vs. State of Haryana (2017) 8 SCC 570*** the objection was raised to the CDRs in a criminal case. In that criminal case, the judgment of ***R.V.E. Venkatachala Gounder*** (Supra) was relied upon. Similarly, in ***P.C. Purushothama Reddiar vs. S. Perumal (1972) 1 SCC 9*** Hon'ble Supreme Court relied upon the ratio laid down in ***R.V.E. Venkatachala Gounder*** (Supra). The said case was pertaining to a police report being admissible in evidence without objection during trial. Further in ***Om Prakash vs. CBI 2017 SCC Online Del 10249***, it was argued by ld. counsel for appellant that ***R.V.E. Venkatachala Gounder*** (Supra) relied upon by ld. counsel for CBI has no application to the facts of the case as the said case dealt with proof of documents in civil matters. Hon'ble High Court of Delhi dealt with the said objections and duly relied upon ***R.V.E. Venkatachala Gounder*** (Supra).

50. Therefore, in view of the discussion made above, it is settled that the judgment in ***R.V.E. Venkatachala Gounder*** (Supra) holds the field. At the risk of repetition, it is again stated that

there is no objection as to the admissibility of special audit report in the present case. The objection raised is only qua mode of proof of Ex.PW1/7 (Colly.).

51. The arguments of learned Senior Counsel for accused persons that special audit report cannot be read in evidence only on account of the fact that CA M.Mittal was not summoned by the complainant is not tenable. Hence, it is turned down.

52. Ld. Senior Counsel for accused no.1 and 3 further argued that the alleged violation of provision of Regulation 73 of CIS Regulations was neither intentional nor deliberate but it was extremely in volatile environment in the business of finance and plantation. He argued that there were no malafides or ill-will on the part of accused persons, which is an essential ingredient for proving the guilt of accused persons. He further argued that the accused persons exercised all due diligence to prevent the commission of such violation but it was beyond their control and therefore, accused No.3 is entitled to benefit of proviso to Section 27 of SEBI Act. During the course of arguments, he narrated the circumstances which have been alleged by him to be beyond control and efforts made by accused persons in order to show that they had exercised due diligence to prevent commission of such violation. The said factors have been enumerated in detail in the arguments address by ld. Senior Counsel.

53. In order to explain the unforeseen and unavoidable

circumstances, accused No.3 has stated in response to question No.47 in her statement recorded under Section 313 CrPC that it was only on 13.08.1998 when Hon'ble High Court of Delhi passed one line order in PIL W.P. No.3944/1998 whereby all the respondent companies including Kuber Mutual Benefits Ltd. and accused no.2, were restrained from disposing off their assets. She further stated that this order was given an unprecedented media coverage which resulted into a panic like situation and after reading such news headlines the investors started thinking that perhaps the Kuber Group is going to be failed hence everybody started to withdraw their money and a long queues were made in front of the 450 offices of the Kuber Group throughout the country. She further stated that even in such circumstances, the Kuber Group kept on paying money to the investors even before maturity hence the entire equilibrium of the company was disturbed and in such circumstances when there is only an outgoing and no inflow of the funds is there, no financial institution or a bank can survive, no matter how strong that bank or a financial institution is. She further stated that even the RBI/State Bank of India will not be able to survive if all together all the investors reach to the bank and start asking their money irrespective of their maturity. Whether can anyone be able to pay the entire money to the investors? When 90% of the money is blocked in loans and advances and in other assets. She further stated that this was the only reason why Kuber Group has to face this problem after 13.08.1998. There was the only reason why Kuber group has to face this problem after 13.08.1998. There was not even a single paisa default before 13.08.1998.

54. Accused no.3 has stated above that there was no default before 13.08.1998 and everything happened due to the order dated 13.08.1998. By virtue of said order, Kuber Mutual Benefit Ltd. and accused no.2 were restrained from disposing off their assets. At this juncture, it is worthwhile to note that the order dated 13.08.1998 was against Kuber Mutual Benefits Ltd. (i.e. one of the company of Kuber Groups) and accused no.2 and not against accused no.1 company. However, the record shows that the correspondence of accused no.1 with SEBI started much prior to that. Ex.PW1/1 is the letter dated 13.01.1998 addressed by accused no.1 company to SEBI submitting the details/information relating to existing CIS by accused no.1 company. It is relevant to note that the said letter was written by accused no.1 company in response to the public notice dated 18.12.1997 and press release dated 26.11.1997 issued by SEBI. In the said letter, accused No.1 company gave the details of the existing CIS alongwith specimen certificates of different schemes, its Memorandum of Articles & Association and the application form required to be filled by the proposed investors. Again accused no.1 in response to letter of SEBI dated 31.03.1998 furnished certain information vide its letter dated 27.04.1998 which was exhibited as Ex.PW1/2 (Colly). Alongwith the said letter, the list of directors was filed wherein the name of accused no.3 appeared. Apart from that, an undertaking was given that they were not floating any new CIS subsequent to the public notice, they had not mobilized any further funds and they ensured the compliance of any further direction on CIS. The auditor's report was also submitted with

Ex.PW1/2 (Colly.) alongwith balance sheet of accused no.1 company as on 31.03.1997, its profit and loss account, schedules forming part of the accounts of the even date duly signed by auditors of accused no.1 company, balance sheet abstracts & companies general profile and fund flow statement. A careful perusal of the balance sheet filed as on 31.03.1997 shows that the liabilities of the companies were much more than the assets. The share capital (promoters) of the company was only Rs.57,000/-. The major amount which strengthened the balance sheet of accused no.1 company was from loans and advances to the tune of Rs.15,54,88,753/- (nearly Rs.15.5 Crores). Current liabilities were much more than the total assets including the loans and advances, share holders funds and the fixed assets, meaning thereby that as on the date of correspondence of accused no.1 company with SEBI i.e. much prior to the passing of the order dated 13.08.1998 by Hon'ble High Court of Delhi in PIL W.P. No.3944/1998, the company was not in a sound financial condition. Even in the special audit report Ex.PW1/7 (Colly.) identical findings were given with respect to the financial strength of the company. Therefore, the contention of learned Senior Counsel that everything happened due to order passed on 13.08.1998 is not correct. Accused No.1 company was not financially strong at the time when the funds were mobilized.

55. Insofar as seizure of FDRs of Rs.5 crores on 09.05.1997 by Income Tax Department is concerned, the said FDRs have been marked as Mark-X2. Perusal of the entire correspondence of accused no.1 company with SEBI vide letters Ex.PW1/1 to Ex.PW1/4 shows that accused persons never disclosed that the

Income Tax Department had seized the FDRs worth Rs.5 crores on 09.05.1997 which was the concealment of a very relevant fact. Perusal of document Mark-X2 shows that it is a panchnama in respect of properties and FDRs of Kuber Finance and Kuber Mutual Benefits Ltd. and not qua accused no.1 company. The FDR appears to be pertaining to a group company of Kuber Group but definitely it did not pertain to accused no.1 company and that would have been the probable reason that this disclosure was not made in the correspondence by accused no.1 company with SEBI. But now at a later stage, this attempt of showcasing of seizure of FDR of a group company as a circumstance beyond control of accused persons herein which led to violation is not acceptable.

56. The other reasons such like attachment of properties by MPID Court, Mumbai, Court of Sh. K.S. Mohi, Id. MM and the accused No.2 and 3 being in judicial custody for 11 months from 04.06.1999 to 06.05.2000 were also put forth. In order to deal with these submissions, it is relevant to note the deposition of DW-1 (accused no.2 P.K. Sharma) who deposed on behalf of all accused persons. DW-1 in his testimony made an attempt to confuse Kuber Planters (accused no.1 company with Kuber Plantations (another group company). In his deposition, he marked the certificate of incorporation and certificate of commencement of business of Kuber Plantation (Group Company) as Mark-A1 and A-2. DW-1 admitted in his cross examination that Kuber Planters Ltd. (Accused no.1 company) and Kuber Plantation Ltd. (Group Company) are two separate

companies with separate registration with ROC. He also stated that Kuber Plantation (Group Company) is still in existence. Accused persons failed to explain the need of placing on record any document of a Kuber Plantation on record, specially its Certificate of Incorporation and Certificate of Commencement of Business. It is a settled law that every company has a separate and distinct legal entity. This shows that in order to create a fake defence and to mislead the Court, documents Mark-A and Mark-B were marked in deposition of DW-1 which dents the version of accused persons.

57. DW-1 in his cross examination further stated that he had mentioned the details of the properties of accused no.1 company in his statement, however, no list of properties exclusively belonging to accused no.1 company has been filed by accused persons. There is no clear evidence in respect of the description of properties of accused no.1 company alongwith the stake of accused no.1 in those properties. DW-1 failed to establish as to which property of accused no.1 was attached by which Court/Authority. The records of different group companies of Kuber was produced and it was portrayed that it was the entire records of accused no.1 company. Therefore, this defence that all the properties of accused no.1 are attached by different courts/authorities, has not been proved

58. Further, in order to show that accused persons had made serious endeavours for repayment to the investors, DW-1 exhibited certain application as Ex.DW1/6 to 16 for release of the amount of the properties in Delhi and Gurgaon Courts in the year

2013. It is relevant to note that no application was made prior to year 2013 though the prosecution was launched by SEBI in the year 2001. DW-1 admitted in his cross examination that the applications filed before MPID court were not for the release of the properties/amount but they were only for seeking the approval of the repayment schedule. It was further admitted by DW-1 that he had not filed any orders passed on the applications Ex.DW1/6 to Ex.DW1/16. Merely filing applications and allowing them to remain pending before different forums is apparently a tactic which has been followed in order to create these kind of defences before different Courts. Hence, this fact of moving applications before different Courts does not establish that accused persons had made any efforts to repay the investors.

59. DW-1, in his examination-in-chief further stated that amount of Rs.17.5 crores was got released from Gurgaon Court. There is no detail as to how that amount was disbursed and to whom. It is not clear whether any repayment was made to the investors under various CIS of accused no.1 company. It is also noticed that in Gurgaon Court, amount of Rs.87 crores was attached out of which only Rs.17.5 crores was got released. Had there been an intention to repay, at least the principal amount of the investors could have been paid by the said amount.

60. In order to show the sincere efforts made by accused persons, DW-1 further stated that they have settled more than 15000 certificate holders and they have made payment from 14.08.1998 till 30.06.2014 and even prior thereto and total

amount of repayment is to the tune of Rs.10 crores to Rs.11 crores. He has exhibited the certificates and list of investors who have been paid by accused no.1 company as Ex.DW1/5 (colly.) DW-1 in his cross examination admitted that there is no mention of mode of payment in the certificates issued to the investors. He volunteered that some payments were made in cash and some were made through cheques and the mode of payment was recorded in the books of accounts. He admitted that books of accounts had not been placed on record. He further admitted that the date of payment and the amount of payment are not mentioned in the certificates which he had filed in the Court. Neither books of accounts were produced to show that any such payment was made to investors of this case, nor it was proved that the alleged payments were made to certificate holders under CIS of accused no.1 company. On one hand, accused no.1 has taken a stand that their offices were ransacked, whereas on the other hand, DW-1 has stated that payment to the tune of Rs.10 to 11 crores was made to investors. It is incomprehensible as to how the alleged investors were identified when accused no.1 company purportedly did not have any record. The source of alleged repayment to the tune of Rs.10 to 11 crores also stands not proved. It is not proved at all that any investor of the CIS pertaining to this case has been paid. Therefore, the accused persons have failed to show that any amount has been paid by them to any of the investors of the schemes floated by accused no.1 company. The aforesaid discussion shows that the defence of accused persons that they exercised due diligence in order to prevent the commission of offence is absolutely sham and

baseless. The judgments in *P.S. Chaudhary* (Supra) and *BPL Ltd.* (Supra) relied upon by Id. Senior Counsel for accused persons are not applicable to the peculiar facts of the present case. The Hon'ble Supreme Court in catena of judgments has held that the Courts should be cautious in applying the ratio of judgments and only when the facts of the case are absolutely identical, the ratio can be applied.

61. Ld. Senior Counsel for accused no.1 and 3 had argued that there is no *mens rea* in the present case and Section 24 of SEBI Act talks about contravention and not violation and therefore, *mens rea* has to be proved. He submitted that complainant had failed to prove the existence of *mens rea* concerning the alleged contraventions.

62. In order to see whether there is a *mens rea* or not, the conduct of the company while floating different schemes have to be seen. In this regard, the balance sheet filed by accused persons alongwith Ex.PW1/2 (Colly) as on 31.03.1997 is relevant. In the said balance sheet, the details of the assets and liabilities as on 31.03.1996 have also been given. The promoters/subscribers have infused only Rs.57,000/- as share capital while forming the company. The fixed assets in the year 1996 were Rs.40,57,104/- and the loans and advances received alongwith cash and bank balances in year 1996 were to the tune of Rs.1,58,14,547/-. It is surprising to note that the promoters capital remained the same, however, the fixed assets increased from approximately Rs.40 lakhs to Rs.6.74 crores

(Rs.6,74,21,532/-). Cash and bank balance alongwith loans and advances rose upto Rs.25 crores (Rs.25,00,91,724/-), current assets rose from approximately Rs.1.5 crores to approximately Rs.25 crores in an year which clearly shows the extent of amount which was mobilized and even then the net worth was negative. The special audit report which was conducted at the behest of SEBI, the report of which is Ex.PW1/7 (Colly.) shows that amount of Rs.86.37 crores was raised from the public from 1995-96 to 1997-98 under seven investment schemes. About 167907 investors invested in various CIS of accused company, however, only 2 to 2.5 lakhs trees were planted as against 10,23,489 under various schemes. It was also mentioned in the said report that accused no.1 company in one of the schemes had promised personal accident insurance to the investors but except for making an advance payment of Rs.10,000/- to insurance company, no steps were taken in that regard. It was also reported that Rs.21.16 crores was given as interest free loans to the employees of group companies in the name of advances against expenses/payment of services. It was further reported that the company has siphoned off huge amount of Rs.2.40 crores by way of interest free loan as Advance against Advertisement to M/s Kuber Media Ltd., another group company, directors of which are directors/promoters of Kuber Planters Limited without complying with the provisions of the Companies Act, 1956. It was further reported that the company has made payment Rs.23 lacs to M/s Kuber Mutual Benefit Ltd., a group company, the directors of which are directors and promoters of Kuber Planters Ltd. and debited the same to "Service Charges" in its books. It

was further reported that the company has siphoned off Rs.21.16 crores by way of interest free loans to employees of group companies or others and group companies and/or in the name of Advance against Expenses/ Payments for services without complying with the provisions of Companies Act, 1956. This report is regarding the floating of CIS by accused no.1 company and the immediate subsequent conduct of company after floating the scheme. Such huge number of innocent people were involved and despite that the basic work of planting the number of trees as promised was not even done. No questions were put to the witness (CW-1) regarding the report except one question regarding planting double the amount of trees than the ones alleged in special audit report which was denied by her. A suggestion was put to DW-1 that investors could not have been repaid as the net worth was negative, which he denied. However, in the response to another question, he admitted at the initial stage that net worth was less but thereafter he volunteered that an undertaking in the letter Ex.CW1/36 was given that the net worth will be increased to the desired level. The aforesaid discussion shows that the accused persons induced the general public to invest in their schemes which promised high returns without any base. The accused persons were never serious about the plantation business and accused no.1 company was incorporated only in order to collect the funds from the public without having its own base/promoters capital. Despite having a complete embargo on running a CIS on the date of incorporation of accused no.1 company, it floated the Collective Investment Schemes, clearly establishes *mens rea* on their part. Therefore,

this argument is completely misconceived and is hence, turned down.

63. Ld. Senior Counsel for the accused no.1 and 3 had further argued that the accused No.3 is a house-wife and had never been responsible for conducting the day to day affairs of the company. He had further argued that she had not signed any financial statement of company, never attended any board meeting and therefore, she cannot be convicted under Section 27 of SEBI Act. In order to meet the arguments of learned Senior Counsel for accused No.1 and 3, the documents filed by complainant are referred to. In the Memorandum of Association Ex.DW1/PX1, the name of accused no.3 appears at serial No.6 in the list of subscribers. This shows that she was promoter/director of accused no.1 company. Further accused no.1 company in response to the letter of SEBI dated 31.03.1998 furnished certain information alongwith documents vide letter Ex.PW1/2 (Colly.). Alongwith the said letter, the list of directors was filed by accused no.1 company wherein the name of accused no.3 duly appeared. The ROC record Ex.CW1/49 (Colly.) was also proved by the complainant. In the said ROC record, the annual return as on 25.09.1998 was filed alongwith which the annexures were filed giving the details of the directors. In the said list, name of accused no.3 appears at serial No.2 wherein she has been shown to be the director and the date of appointment was stated to be 06.04.1995 which confirms that she was the promoter & director and date of her ceasing was 'NIL' which indicates that even in 1998, she was the director of accused no.1 company. Similarly in another annual return filed in respect of AGM dated 03.05.1999,

her name appeared as Director w.e.f. 06.04.1995. In the same ROC records, there is a notice dated 02.09.2003 for convening the annual general meeting of the shareholders which was scheduled on 27.09.2003 wherein the agenda of the said meeting was mentioned. One of the said agenda was *“to appoint Director in place of Mrs. Rowena Sharma who retires by rotation and being eligible offers herself for re-appointment”*. It is again relevant to pinpoint that this notice is of September, 2003 when the present case had already been filed. Even then accused no.3 offered herself for re-appointment which indicates that she was not a simple house-wife.

64. During the cross examination of DW-1 (accused no.2 P.K. Sharma), he was shown the board resolution dated 26.02.1998 passed by the Board of Directors of accused no.1 company and it was exhibited as Ex.DW1/PX2. DW-1 admitted that the said board meeting was attended by him as well as by accused no.2 and 3. Rowena Sharma is accused no.3. This admission on the part of accused no.2 shows that accused no.3 was actively participating in the meetings conducted by accused no.1 company and she was part of Board of Directors of accused no.1 company. It is further noted that while accused no.1 company applied for provisional registration vide letter dated 16.09.2000 Ex.CW1/36 (Colly.), declaration of the directors was filed alongwith it whereby it was declared by the directors of accused no.1 company as under:

“We directors of Kuber Planters Ltd. hereby declare that:

a) schemes of the company are in the nature of collective investment schemes;

- b) the affairs of the applicant care not being conducted in a manner detrimental of the interest of existing investors;*
- c) the company has atleast 50% independent directors; and*
- d) any person, directly or indirectly connected with it has not been granted registration by the Board under the Act.”*

65. The said declaration was duly signed by accused no.3 apart from accused no.2 and 4. After signing this declaration, accused no.3 cannot be plead that she was only a house-wife. It is further noted that alongwith same Ex.CW1/36 (Colly), bio-data of accused no.3 and other directors were also filed wherein in the column of experience, it has been stated *“she have good and practical experience in the field of banking and finance. She joined Vijaya Bank as assistant in 1977 and worked there for more than 8 years and resign in 1985. She has been Director in some many companies belonging to Kuber Group of Companies engaged in the xxx xxx xxx”*.

66. By no stretch of imagination, it cannot be accepted that accused no.3 was a house-wife. She was well educated lady and had a banking experience and was the director of other Kuber Group Companies. After filing the declaration as stated above, she just cannot turn the clock back and plead that she was only a house-wife. This argument of learned counsel for accused no.1 is completely misconceived and is liable to be turned down.

67. Ld. Senior Counsel for accused no.1 and 3, in order to say that accused no.3 was not in-charge and responsible for day to day affairs of the company, had relied upon many judgments

which has been listed in the arguments addressed by Id. Senior Counsel for accused persons. None of the said judgments is applicable to the facts of the case in hand as the facts in the present case are peculiar as discussed above and it has been established beyond reasonable doubt that she was actively participating in managing the business of accused no.1 company. There is yet another argument addressed by Id. counsel for accused no.1 and 3 that the averments against accused no.3 are not explicit and it has not been specifically pleaded that how she was responsible for conducting day to day affairs of accused no.1 company in the business for which she cannot be held guilty for the offence charged of. In view of the backdrop of discussion made above, the mere fact that the complaint does not bear the details as to how accused no.3 was involved in day to day affairs of accused no.1 company, does not extend any benefit to accused no.3. The documents filed in support of the complaint by the complainant speaks volume about the same as has been discussed in detail in the preceding paragraphs. Therefore, this arguments is also not tenable. *(Reliance in this regard can be placed on Mohd. Iqbal vs. SEBI & Anr. 2023 SCC Online Del 4070).*

Conclusion

68. It has been proved beyond reasonable doubt that accused no.1 company floated Collective Investment Schemes while there was a complete embargo of Section 12 (1B) of SEBI Act. It has further been proved that accused no.3 Rowena Sharma was an active director and was responsible for day to day affairs of accused no.1 company. The accused persons trapped innocent public by promising them returns which were unrealistic and

could never be given. Accused persons failed to prove that any payment to any of the investors under the schemes floated by accused no.1 company was made at any point of time. It is an admitted fact that no winding up report has been filed by accused persons before SEBI. They failed to prove that proviso to Section 27 of SEBI Act with respect to exercising due diligence in order to prevent the commission of offence was applicable to accused no.3. Under these facts and circumstances, accused no.1 company i.e. Kuber Planters Ltd. is held guilty of the offence under Section 11B, 12(1B) of SEBI Act and Regulation 5(1) r/w Regulation 68(1), 68(2), 73 and 74 of CIS Regulations, punishable under Section 24 of SEBI Act and accused no.3 Rowena Sharma is held guilty of the offence under Section 11B, 12(1B) of SEBI Act and Regulation 5(1) r/w Regulation 68(1), 68(2), 73 and 74 of CIS Regulations, punishable under Section 24 r/w Section 27 of SEBI Act and convicted accordingly.

**Announced in open court
on 23.09.2024**

**VANDANA
JAIN**

Digitally signed by
VANDANA JAIN
Date: 2024.09.23
12:45:04 +0530

(Vandana Jain)

**ASJ-03 & Special Judge (Companies Act)
Dwarka Courts (SW)/New Delhi/23.09.2024**

**Note: This judgment contains sixty-one (61) pages and having
my signature on each page.**

**VANDANA
JAIN**

Digitally signed
by VANDANA
JAIN
Date: 2024.09.23
12:45:09 +0530

(Vandana Jain)

**ASJ-03 & Special Judge (Companies Act)
Dwarka Courts (SW)/New Delhi/23.09.2024**