

## CASE COMMENT: SAHARA INDIA REAL ESTATE CORPORATION LIMITED AND OTHERS V. SECURITIES AND EXCHANGE BOARD OF INDIA (2012)

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### INTRODUCTION

Large conglomerate Sahara India and the Securities and Exchange Board of India (SEBI) fought each other in the historic case of Sahara India Real Estate Corporation Ltd. vs. SEBI (2012). SEBI suspected that Sahara had violated securities regulations when it issued Optionally Fully Convertible Debentures (OFCDs), which was the main focus of the legal action. This lengthy court case lasted five long years.<sup>1</sup>

Sahara India Pariwar is a conglomerate based in Lucknow, India, with a wide range of business interests including manufacturing, information technology, media and entertainment, housing, infrastructure, finance, and retail consumer goods. The principal activities of Sahara India Real Estate Corporation Limited (SIRECL) and Sahara Housing Investment Corporation (SHICL), subsidiaries of this conglomerate, are land acquisition and development for residential housing developments throughout India. A complicated web of financial irregularities involving the Sahara Group, overseen by Subrata Roy, resulted in an order for Subrata Roy to refund 24000 crores to investors together with the interest that had accrued.

### FACTS OF THE CASE

Sahara India Financial Corporation was barred by the Reserve Bank of India (RBI) in 2008 from accepting new deposits. Sahara's economic empire had always grown mysteriously, raising doubts about whether it was a Ponzi scheme using investor money.<sup>2</sup>

Sahara India required a financial tool that would allow them to get around the RBI's ban on accepting public deposits while still allowing them to access public funds. Sahara created two firms, Sahara India Real Estate Corporation (SIREC) and Sahara Housing

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<sup>1</sup> LawBhoomi, 'Sahara vs SEBI' (*LawBhoomi*12 September 2023) <[https://lawbhoomi.com/sahara-vs-sebi/#Issues\\_Raised\\_in\\_the\\_Case](https://lawbhoomi.com/sahara-vs-sebi/#Issues_Raised_in_the_Case)> accessed 21 July 2024

<sup>2</sup> LawBhoomi, 'Sahara vs SEBI' (*LawBhoomi*12 September 2023) <[https://lawbhoomi.com/sahara-vs-sebi/#Issues\\_Raised\\_in\\_the\\_Case](https://lawbhoomi.com/sahara-vs-sebi/#Issues_Raised_in_the_Case)> accessed 21 July 2024.

Investment Corporation (SHIC), in order to issue Optionally Fully Convertible Debentures (OFCDs). When a firm solicits funding from more than fifty investors, it becomes a public offering and must apply for approval from the Securities and Exchange Board of India (SEBI) and comply with SEBI's disclosure guidelines.

The Sahara group has asked for contributions from about 30 million people. Apart from the magnitude and quantity of investors, an additional intentional mistake was maintaining an open-ended offering when these kinds of concerns ought to have concluded in six weeks. A Sahara group business really raised Rs 17,250 crore by keeping an offering open for ten years. When the group attempted to acquire money by using the stock market through its subsidiary Sahara Prime City, the default of Sahara India became apparent. The company was required to file a prospectus and provide financial data on the group's companies in order to do this. K.M. Abraham discovered problems with SIREC and SHIC during this exercise, when money was obtained through OFCDs but was passed off as private placement.<sup>3</sup>

Abraham found that companies had trouble returning the money because they did not have accurate records on the identities of their investors, even if they had raised enormous sums of money. By appealing SEBI's findings to the Securities Appellate Tribunal (SAT) and the Supreme Court, the Sahara group successfully contested the agency's conclusions. The SAT upheld SEBI's conclusions. This was hardly the end of the Sahara Group's problems. Sahara Group was given a 90-day deadline by the Supreme Court to reimburse Rs. 24000 crores to SEBI, after which the agency will distribute the funds to real investors. Sahara asserted that they have, however, returned the majority of the funds during the past year, leaving them with only about Rs. 5000 crores.

The Supreme Court warned that it might hold Sahara's officials in custody until the money was received in October, expressing dissatisfaction with the group's tactics of delay. The Supreme Court Bench summoned Subrata Roy and other directors to provide an explanation for the delay after observing that earlier directives had not been followed.<sup>4</sup>

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<sup>3</sup> 'Sahara India vs SEBI : A Deep Study in Financial Compliance' ([www.linkedin.com](http://www.linkedin.com))  
<<https://www.linkedin.com/pulse/sahara-india-vs-sebi-deep-study-financial-compliance-manshu-garg-odvtc>>  
accessed 21 July 2024

<sup>4</sup> 'SEBI | Order in the Matter of Sahara India Real Estate Corporation Limited & Ors.' ([www.sebi.gov.in](http://www.sebi.gov.in))  
<<https://www.sebi.gov.in/enforcement/orders/aug-2012/order-in-the-matter-of-sahara-india-real-estate-corporation-limited-and-ors-23665.html>> accessed 21 July 2024

## ISSUES OF THE CASE

1. Whether SEBI is authorized to look into and make a decision in this case under Sections 11, 11A, and 11B of the SEBI Act and Section 55A of the Companies Act or is it the Ministry of Corporate Affairs (MCA) that possesses the jurisdiction under Sec 55A (c) of the Companies Act.
2. Is it true that the distribution of OFCDs to millions of subscribers was a private placement and not subject to the SEBI Regulations and other sections of the Companies Act?
3. Do the hybrid OFCDs meet the definition of "Securities" under the Companies Act, SEBI Act, and SCRA, giving SEBI the authority to look into and make a decision?
4. Does this situation fall under the Public Unlisted Companies (Preferential Allotment Rules) 2003?
5. OFCDs are convertible bonds and they are excluded from the SCRA's applicability in accordance with section 28(1) (b).

Does Section 73 mandatory listing requirement apply to all public issues, or does it rely on the 'intention of the company' to get listed?

## OBSERVATION OF SUPREME COURT

In *Sahara v. SEBI*, the Supreme Court decided that SEBI is in fact able to look into and make a decision in this case. It emphasized that SEBI's authority is not in conflict with the Companies Act and is meant to safeguard investors' interests. The Court made clear that SEBI's authority is supplemental and ought to be interpreted in accordance with the legislation already in place. When it comes to defending the interests of investors, SEBI has unique authority and the Ministry of Corporate Affairs (MCA) and SEBI do not clash over jurisdiction. The Court held that, for the purposes of Section 67(3) of the Companies Act, any security that is offered to and subscribed by more than 50 people is considered to have been made public. As a result, SEBI has jurisdiction over these situations, and the issuer is required to abide by all applicable laws for a public offering.

The Sahara firms were subject to civil and criminal penalties when they violated listing restrictions by exceeding the threshold statutory limit set forth in Section 67(3).<sup>5</sup>

Despite being hybrid instruments, the two businesses' Optionally Fully Convertible Debentures (OFCDs) still meet the requirements for securities under the Companies Act, SEBI Act, and Securities Contracts (Regulation) Act (SCRA). The Court emphasized that the fact that OFCDs were widely offered to millions of people validated their marketability as securities and that the word "debenture" was incorporated into their name further cemented this classification.

The Unlisted Public Companies (preferred Allotment) Rules 2003 are only applicable in the event that unlisted companies choose to engage in the preferred allotment, as the Supreme Court made clear. If there is a public issue surrounding the preferred allotment, then the 2003 Rules are not applicable. The Court observed that debentures, which are classified as a different class of securities under Section 2(h) of the SCRA, are not excluded by Section 28(1) (b), which exclusively excludes convertible bonds and shares/warrants of a particular type from the applicability of the SCRA.<sup>6</sup> The Sahara firms argued that OFCDs were exempt from the Securities Contracts (Regulation) Act (SCRA) under Section 28(1) (b) since they were convertible bonds. However, the Court rejected this contention.

The petitioner contended that only firms that 'intend to get listed' are subject to the required listing requirement under Section 73 of the Firms Act. However, the Supreme Court dismissed this contention. The Court decided that the intent of the corporations to become listed is not significant as long as the law is unequivocal and clear and securities are distributed to more than 49 individuals under Section 67(3). It is required for companies to apply for the listing of their securities on a stock exchange in accordance with Section 73(1).

The legal clarity regarding the jurisdiction of SEBI, the classification of OFCDs as securities, the consequences of surpassing the threshold for a public offer under Section 67(3), and the mandatory nature of listing requirements under Section 73 of the Companies Act is provided by the Supreme Court's observations in the Sahara versus SEBI case.

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<sup>5</sup> 'Sahara vs. SEBI-an In-Depth Analysis of the Landmark Supreme Court Ruling - Shareholders - India' ([www.mondaq.com](http://www.mondaq.com)) <<https://www.mondaq.com/india/shareholders/203796/sahara-vs-sebi-an-in-depth-analysis-of-the-landmark-supreme-court-ruling>> accessed 21 July 2024

<sup>6</sup> 'Sahara vs. SEBI-an In-Depth Analysis of the Landmark Supreme Court Ruling - Shareholders - India' ([www.mondaq.com](http://www.mondaq.com)) <<https://www.mondaq.com/india/shareholders/203796/sahara-vs-sebi-an-in-depth-analysis-of-the-landmark-supreme-court-ruling>>.

## JUDGEMENT

In its ruling in the Sahara v. SEBI case, the Honourable Supreme Court of India gave a number of crucial directives. The Supreme Court mandated that Sahara India Pariwar return all of the money it had received, plus interest at the rate of 15 per cent up until the refund date.<sup>7</sup> The goal of this decision was to safeguard the interests of the investors who were impacted by the OFCD problem. In addition to maintaining SEBI's jurisdiction, the Supreme Court gave the regulator additional power by giving it the ability to formally implement the refund order. This proved the Court's dedication to safeguarding investors and making sure financial markets are regulated.

The Chairman of Sahara India Pariwar and other members who disobeyed the restitution order have been arrested by the court on a non-bailable warrant. This lawsuit demonstrated how important it is to follow the Court's orders and comply with SEBI requirements.

## ANALYSIS OF THE JUDGEMENT

The decision emphasized how crucial complete disclosure is in first public offerings. By doing this, investors can make well-informed decisions by gaining access to vital information about the business and the investment. Companies are strongly warned by the ruling not to use opaque offerings as a means of deceiving or abusing investors.

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The ruling makes the investment climate more equitable for investors by imposing requirements on both listed and unregistered businesses looking to raise capital from the public. The ruling made clear that SEBI has the authority to control securities offers made to the public, even by unlisted businesses that may eventually list. By doing this, SEBI's influence grows and a more thorough regulatory framework is promoted. The case brought to light the difficulties in implementing laws, especially with relation to investor identification and large-scale refunds, even though the ruling gives SEBI more authority.

## CONCLUSION

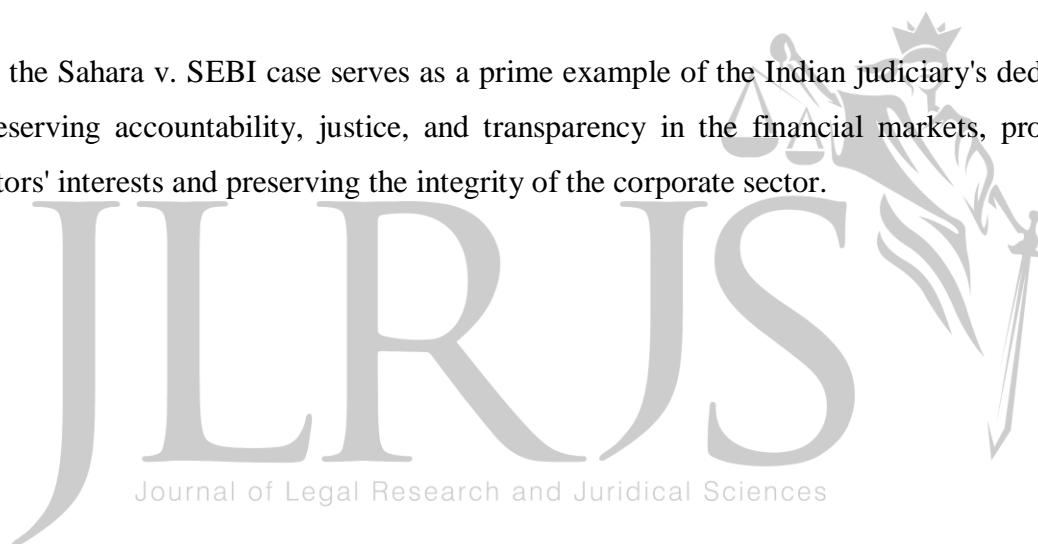
One of the landmark rulings in Indian securities law is the Sahara-SEBI case. It is an important ruling that protects investors' interests and financial security in situations involving corporate

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<sup>7</sup> 'SEBI | Order in the Matter of Sahara India Real Estate Corporation Limited & Ors.' ([www.sebi.gov.in](http://www.sebi.gov.in)) <<https://www.sebi.gov.in/enforcement/orders/aug-2012/order-in-the-matter-of-sahara-india-real-estate-corporation-limited-and-ors-23665.html>> accessed 21 July 2024

and share-market irregularities. The case brought to light the difficulties regulatory agencies encounter when addressing intricate financial scams and the significance of strictly enforcing securities rules. Investor protection and regulatory uniformity are enhanced by this order, which closes jurisdictional gaps between the Ministry of Corporate Affairs and SEBI. An important ruling in Indian securities law is the Sahara-SEBI case. The aforementioned ruling represents a significant ruling in defending investors' interests and financial stability when there are abnormalities in the corporate and share market.<sup>8</sup> This case demonstrated the difficulties regulatory agencies have in addressing sophisticated financial scams and the need to strictly enforce securities rules. This order enhances regulatory uniformity and safeguards investors by bridging the jurisdictional gaps between the Ministry of Corporate Affairs and SEBI.

Thus, the Sahara v. SEBI case serves as a prime example of the Indian judiciary's dedication to preserving accountability, justice, and transparency in the financial markets, protecting investors' interests and preserving the integrity of the corporate sector.



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<sup>8</sup> 'Sahara India vs SEBI : A Deep Study in Financial Compliance' ([www.linkedin.com](http://www.linkedin.com))  
<<https://www.linkedin.com/pulse/sahara-india-vs-sebi-deep-study-financial-compliance-manshu-garg-odvtc>>  
accessed 21 July 2024