

1. Mr. Subrata Roy & Sahara Group: A case Study

The past few days have been very busy for the Sahara Family. The Patriarch Mr. Subrata Roy was arrested over the weekend and is currently under judicial custody along with a few of his key management personnel for his alleged involvement in the 20,000 crore Investment Cam perpetrated by his group companies. Yes, you read it right – 20,000 crores. A common man who owes let's say just Rs. 20,000/- to his credit card will get recovery agents to his house daily and will end up getting some of his assets repossessed within weeks. Here we have a billionaire who has been saying that he will repay the money soon for years and hasn't actually done it yet. Talk about disparity in how the LAW Treats you based on who you are...

Anyways, the purpose of this article is to explain to you what exactly happened so that you will know why this case is hogging the news so much of late...

The Beginning ...

In 2010, two **Sahara Group Companies Sahara India Real Estate Corporation (SIREC)** and **Sahara Housing Investment Corporation (SHIC)** were raising large sums of money – Thousands of Crores from investors by issuing Optionally Fully Convertible Debentures to the public.

Trivia:

An Optionally Fully Convertible Debenture is just a kind of Bond that can be converted into Equity Shares by the investors if they want to. So, this is a kind of hybrid market instrument that would come under the jurisdiction of the Securities and Exchanges Board of India (SEBI)

Back to the topic, these two companies were raising thousands of crores but SEBI was not fully aware of why they were doing so or what they were doing with the collected money. Ideally speaking, before such an issue happens, the company is expected to file a request with SEBI, get it approved and then start the collection of

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public money. However, that wasn't the case.

So, how did SEBI Find out that Sahara was collecting public money?

Actually, it was a random accident. Mr. Abraham who was the Director of SEBI until July 2011 was reviewing the **Draft Red Herring Prospectus (DRHP)** to raise equity for real estate company Sahara Prime City Ltd through an initial public offering (IPO). The DRHP disclosed details of two associate group companies (SIREC and SHIC) that were raising huge amounts of money from the public through optionally fully convertible debentures.

Trivia:

Any company that wants to issue equity shares or Debentures or any other market related instrument to the public through the IPO Process has to file a Draft Red Herring Prospectus or DRHP to SEBI to tell them the details of the public issue, why they are doing so, their financial position etc. It is pretty standard procedure in India.

So, when SEBI found out that two Sahara Group Cos were raising thousands of crores by issuing optionally fully convertible debentures which they were not aware of, they started digging to find out what exactly is happening.

So, what did SEBI Do when they found out?

SEBI asked the two companies – Sahara India Real Estate Corporation (SIREC) and Sahara Housing Investment Corporation (SHIC) to stop raising money through an order dated 24 November 2010

What did Sahara do in Response?

The usual – whatever large corporates do in our country when they are questioned...

Sahara rushed to the Lucknow bench of the Allahabad High Court, which stayed

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Sebi's order but not its investigation. Sebi moved the Supreme Court, but the apex court too was not of much help. It merely directed the high court to expedite the case. The high court vacated its stay only on 7 April 2011, when it found that the Sahara group was not cooperating with Sebi as it had directed.

On 29th April 2011 the Allahabad High Court lost patience with Sahara and dismissed the group's petition against Sebi with the following remarks:

“A person, who comes to the court, is supposed to come with clean hands and bona fide intentions, and has to abide by the orders passed by the court, more so in a case where the parties' counsel agree for certain actions to be undertaken. If some assurance is given by any person to the court, as has been done in the present case, and the said assurance/understanding is not honored, the court would not come to his rescue. The application is, therefore, rejected.”

What was SEBI's Justification to go with the Court-Case Route?

The Sahara Group primarily challenged SEBI's intrusion into the affairs of SIREC and SHIC saying that OFCDs were not under SEBI's jurisdiction since they were hybrid instruments – neither shares nor debentures.

Also, while Sahara was arguing with SEBI about whether their issue came under SEBI's jurisdiction or not, they also claimed that the OFCDs were being privately placed with the Sahara Group and not to the general public. When no public offer was involved, how could SEBI intervene?

Was this Justification True?

Of Course Not. Any market related instrument comes under SEBI's Jurisdiction. Sebi demolished this argument easily since they were debentures that could be converted into shares. This contention was later upheld by the Securities Appellate Tribunal

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and the Supreme Court in 2012.

Sahara's counter to the Private placement point was - when Sahara offices and agents were busy hawking these OFCDs, and when the two companies SIREC and SHIC had over 6 million investors, the offers can't possibly be considered as a private placement.

Was Sahara Right in Excluding SEBI from their OFCD Issue?

Absolutely Not.

Before the OFCD Issue starts, according to the Schedule II of the Companies Act of India, SEBI has to Review and Vet the DRHP of the company. The Schedule also specifies that, when the company files its DRHP, the Company Directors have to file a Declaration saying that they have complied with all provisions of the Companies Act and the SEBI guidelines.

In reality, the Directors of these 2 Sahara companies SIREC and SHIC excluded all references to SEBI while signing their declarations.

On top of all this, this whole OFCD Issue had actually started in 2008 for SHIC and the SIREC Issue had no-closing date. How can an Issue happen which has no closing or end date?

Why Does SEBI Have these Guidelines?

The main reason behind SEBI Asking companies to follow the guidelines is to protect the Investor. If some random company starts issuing stocks or bonds in the market and dupes investors, who would be responsible?

Ya that's right SEBI. This is why SEBI has those guidelines. Plus, unregulated collection of funds from the public could result in Money Laundering and other illegal activities which SEBI is trying to control here...

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The Obvious Next Question – Why Would a company like Sahara try to bypass the Process?

I guess the easiest answer is because – they can. They have enough political and financial backing to get away with anything. At least – that is what they thought so up until they were caught in this situation.

History:

Another Sahara group company, Sahara India Commercial Corporation, had kept an issue of size worth Rs 17,250 crore open for 10 years! How they managed to do this right under SEBI's nose is still a mystery. Maybe if we get into details of who helped them, maybe a lot more heads will roll...

So, What did SEBI Do, after it found Irregularities?

SEBI simply asked the following questions:

1. Why are you raising the money?
2. Who are the owners and investors in these companies that are collecting the money?
3. What do you intend on doing with the collected money?
4. Why the OFCD Issues were open for such a long period and what will be the Closing Date?
5. Why did the OFCD Issue Open without the DRHP being filed with SEBI?

Was Sahara able to answer these questions?

Unfortunately NO. They were not able to get straight answers to questions 1, 3, 4 and 5. In fact, they didn't even have a list of Investors who had invested into the company. To find out the names of its own investors, SIREC actually needed the help of professional accounting firms. If the identity of the investors and addresses themselves are not readily available with a company how is it practically possible

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that the issue was even a legit one?

So, What are the Courts Saying Now?

The courts were totally unhappy about the fact that the Sahara Group was non-cooperative throughout the Investigation. The Supreme Court had directed the group to refund the money collected by them to the Investors. Sahara was asked to block or pledge assets worth 20,000 crores to help SEBI recover the money and refund it to investors.

Why Did the Courts Come to such a Drastic Decision to Arrest Mr. Roy?

SEBI Even tried freezing Sahara's assets with banks but that measure wasn't successful. They reached out to 58 banks in India and they were able to recover a total of 1 Crore. Yes, you read it right – Just 1 crore. It is surprising how little money such a large corporate had in its accounts.

Sahara had pledged an Asset – 700 plus Acres of unbuilt land in Ambey Valley in the outskirts of Mumbai. Sahara claimed that this asset was worth over 3400 crores. But when State Bank of India tried to estimate the value of the Asset their valuation was a mere 870 crores. Other assets that Sahara were pledged were even hard to locate for SEBI. Sahara had claimed that they had 46 lakh sq. ft of land in Goregaon but based on the Land Survey numbers given, the size of the plot was just 19 lakh sq. ft. On top of this, according to governmental records the land may not even belong to Sahara. SEBI got back to the supreme court that, they were not even able to find out some of the assets pledged by the group.

On top of all this, Mr. Roy never appeared in person to explain the situation. Of course, this was up until last week when the Supreme Court got really frustrated and issued a Non Bailable Arrest Warrant against Mr. Roy which eventually resulted in him finally gracing the Supreme Court with his Presence.

Could this really be a Legit Attempt by Sahara to Raise Funds?

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Maybe, maybe not. This is something only a thorough investigation by impartial authorities can find out. However, based on the facts I was able to gather from the Internet, it doesn't seem to be a Legit Attempt by Sahara to Raise Funds. Here is why...

1. They explicitly went under the nose of SEBI. If they were legitimately trying to raise funds – why exclude SEBI?
2. They were unable to furnish basic details requested by SEBI or the Supreme Court
3. They have been trying to Impede the Investigation all along and the assets they pledged are either non-existent or don't have the value they claim
4. Their Bank Accounts in India do not seem to have that much funds. The 20,000 crores that they collected seems to have just vanished...

The Smoking Gun

Over the past few years – Mr. Subrata Roy and his Group have purchased the following:

1. The IPL Team – Pune Warriors India
2. A Stake in a Formula 1 Team – Sahara Force India
3. A Stake in Plaza Hotel in New York
4. A Stake in Dream Downtown Hotel in New York
5. A Stake in Landmark Grosvenor House Hotel in London

All this purchases would have cost Sahara around 9000 crores or more. Sahara claims to have purchased these Assets using their liquid cash surplus and through profits made by the other Sahara Group companies.

With the amount of money they have in their bank accounts in India and given the fact that most of the Sahara Group Cos posted little to no profits over the past many years – it is practically not possible that they came up that much funds internally.

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When the Enforcement Directorate probed these transactions, they found that a large chunk of funding (2500 crores) in the purchase of the Landmark Grosvenor House Hotel in London came from SIREC – one of the companies that SEBI is Investigating.

Also, the Enforcement Directorate (ED) Was also able to find suspicious cash transactions. Money was routed from SIREC to Aamby Valley, and from there to Mauritius and London. The transactions took place from mid-2011, around the time SEBI had begun probing SIREC.

The Most Recent Update:

Yesterday the Supreme Court was very hard on Mr. Subrata Roy. They were totally unhappy over the fact that he and his group have been non-cooperative throughout the whole investigation. He asked for more time to refund the money and was trying to pacify the Judges. The Judges said that they tried to accommodate him but since his behaviour was not satisfactory, they had no choice but to arrest him. Mr. Roy offered fresh Bank Guarantees worth Rs. 22,500/- crores to SEBI and the Supreme Court.

My Last Words:

As the full details are yet to be made public by Investigators, there is a possibility that all of this was a big confusion. However, based on the details that have come out so far, it looks like this whole fund raising exercise was some grand scheme orchestrated by the Sahara Group to just collect money from the public without actually divulging true details. As the authorities suspect this could be a Money Laundering exercise or some scheme by them to convert black money to white.

At this time – God Only Knows what the truth is. We would have to wait until the Authorities finish their investigations and the Supreme Court comes up with its final ruling

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Here is a time line of the Sahara-Sebi case

November 2010: The Securities and Exchange Board of India or SEBI, bars Sahara India Group chief Subrata Roy and two companies from the Sahara stable - Sahara India Real Estate Corp and Sahara Housing Investment Corp - from raising money from the public. The two companies had raised several thousand crores through optionally fully convertible debentures.

SEBI deemed the fund-raising illegal, to which Sahara responded with full-page advertisements in newspapers.

December 2010: On an appeal by Sahara on December 1, the Lucknow bench of the Allahabad High Court orders the watchdog not to take any coercive action until an order is passed.

January 2011: A Delhi court issues a bailable warrant against Sahara India Group's chairman Subrata Roy and four other officials of the group on a complaint that they duped investors in a proposed housing project of Rs.25,000 crore, holding there was enough prima facie material to proceed.

February 2011: The Delhi High Court stays proceedings against Sahara India Group's chairman Subrata Roy and four other officials in a Delhi court on a complaint that they duped investors in a proposed housing project.

May 2011: The Supreme Court directs Sahara India Real Estate to furnish the format of the application for an optionally fully convertible debentures (OFCD) scheme and a list of accredited agents raising money on its behalf after the firm claimed it was not liable if investors provided false address and other details.

June 2011: Sebi directs Sahara firms to immediately refund the money collected through sales of OFCDs with annual interest of 15 percent.

October 2011: The Securities Appellate Tribunal (SAT) orders two unlisted Sahara Group companies to refund within six weeks about Rs 24,000 crore that they had raised through a controversial flotation of OFCDs three years ago.

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November 2011: The Sahara group moves the Supreme Court challenging the SAT's order asking the company to refund the money raised through OFCD to investors within six weeks.

November 2011: In a relief to Sahara group, the Supreme Court stays the SAT order directing its two companies to refund around Rs 17,400 crore to their investors and asked for the details of their assets and liabilities.

January 2012: The SC gives Sahara Group companies three weeks' time to choose between two courses to secure the investments made by the public in the OFCD scheme -- either to give sufficient bank guarantee or attach properties worth the amount. _

March 2011: Sahara India Real Estate Corp voices its grievance over a news channel reporting its proposal made to the Securities and Exchange Board of India on securing the money it mopped up from the market.

April 2011: While protecting the rights of an accused to a free and fair trial not prejudiced by media reporting, the Supreme Court should not cross the 'Lakshman Rekha' of reasonable restrictions provided in the constitution, a senior lawyer contends.

May 2012: The Supreme Court is informed that the stock market regulator could not have taken up the issue of Sahara group of companies mopping up Rs.17,400 crore through debentures and ordered their refund.

Senior counsel Fali Nariman, appearing for Sahara India Real Estate Corp, told the apex court bench of Justice K.S. Radhakrishnan and Justice J.S. Khehar that the Securities and Exchange Board of India (SEBI) took up the matter even though there was no complaint from any investor.

June 2012: The SEBI tells the Supreme Court that the real estate arm of the Sahara group of companies had no right to mobilise Rs.27,000 crore from 30 million investors through debentures without complying with the regulatory regime.

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June 14, 2012: The Supreme Court reserves its verdict on a plea by Sahara group of companies, dealing in real estate and housing, challenging a tribunal's direction to repay money collected from investors through debentures. _

August 2012: The Supreme Court directs Sahara group's real estate company to return with a 15-percent interest the Rs.17,000 crore (\$3.5 billion) it had mopped up as debentures from investors.

October 2012: The Sahara group moved the Supreme Court, seeking the review of its Aug 31 verdict directing Sahara to return to investors Rs.17,400 crore with 15 percent interest that it had mopped up through Optionally Fully Convertible Debentures (OFCDs) in 2008 and 2009.

October 19, 2012: The Supreme Court tells market regulator SEBI that it was free to initiate action against two real estate companies of the Sahara group if they fail to take steps for the refund of investors' money as directed by the apex court.

November 2012: Sebi files a contempt petition against Sahara claiming it had not furnished the investor documents within the court stipulated time. The Sahara group in response moved the Securities Appellate Tribunal (SAT) in protest against market regulator Sebi's refusal to extend the deadline for the submission of documents relating to the bond flotations by two unlisted group firms.

November 29, 2012: Gopal Subramaniam, senior counsel, appearing for the appellants (SIRECL and SHICL) argued in court that they were forced to approach the tribunal because of Sebi's refusal to accept the documents tendered by the Sahara entities.

He also expressed the apprehension that a pay order of Rs 5,120 crore to repay the amount to the investors who subscribed to the optionally fully convertible debentures (OFCDs) would not be accepted by Sebi.

There is no clarity on how the Sahara group had arrived at the sum of Rs 5,120 crore when the Supreme Court had directed it to refund Rs 17,400 crore along with 15 per cent interest.

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December 2012: Sahara Group moves the Supreme Court after SAT rejects its appeal against SEBI.

The Supreme Court , however, lashed out at Sahara group's real estate companies saying their conduct was "shady" in the matter of returning the investors' money mopped up under optionally fully convertible debentures scheme.

December 5, 2012: The Sahara Group gets a temporary reprieve from the SC. The Supreme Court directed the Sahara group to refund Rs 24,000 crore to its three crore investors in nine weeks amid stiff opposition from Sebi and depositors over staggered payments. The Supreme Court asked market regulator SEBI to accept their pay order of Rs.5,120 crore as part payment of the investors' money they had collected through optionally fully-convertible debentures (OFCD). Sahara India Real Estate Corporation and Sahara Housing Investment Corporation - would deposit remaining amount in two installments. The court said that Sahara would deposit a sum of Rs.10,000 crore in the first week of January next year and the balance amount in the first week of February.

January 2013: Sahara misses the repayment deadline set up by SC. The company fails to deposit the second installment amount with market regulator. It was required to submit Rs 10,000 crore by January first week. The Supreme Court also dismissed the Sahara group's plea for a review of its verdict directing two Sahara firms to refund around Rs 24,000 crore to their investors with 15 per cent interest.

February 2013: The Supreme Court tells market regulator Sebi that it was free to freeze accounts and seize properties of Sahara group's two companies for defying court orders by not refunding Rs. 24,000 crore to investors.

Market regulator Securities Exchange Board of India also cautioned investors and the general public against dealing with two Sahara group companies -- Sahara India Real Estate Corp and Sahara Housing Investment Corp -- and their promoters.

Sebi later sought the arrest of Sahara Subrata Roy.

March 2013: Sebi's whole time director Prashant Saran orders Subrata Roy and three other directors of the Sahara group to appear before him at 3pm on April 10

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and submit a list of all their assets and copies of their income and wealth tax returns from financial year 2007-08.

April 2013: The Lucknow bench of the Allahabad High Court seeks a response from Sahara India and its chairman Subrata Roy on a PIL accusing them of denigrating SEBI through an advertisement in newspapers March 17.

Sahara chief Subrata Roy, however responds that his group had repaid Rs 20,000 crore to its investors and it was the market regulator which was delaying repayments. He added that the Securities and Exchange Board of India (Sebi) should refund the balance Rs 5,000 crore already deposited with it to remaining investors

July 2013: Sebi files a contempt petition against Sahara in SC. Says company flouting SC direction to make refund.

August 2013: The Securities and Exchange Board of India (SEBI) urges the Supreme Court to award maximum punishment to Sahara India's head Subrata Roy.

October 2013: The Supreme Court directs the Sahara Group to give original title deeds of its assets worth Rs.20,000 crore to SEBI as a guarantee towards the payment of investors money.

January 2014: The Supreme Court Tuesday turns down the plea by Sahara India group chief Subrata Roy to travel abroad to take care of his overseas business interests, saying that its nod was tied to the company showing that investors' money has been repaid

31st July 2014: The Delhi government on Wednesday informed the Supreme Court that Sahara chief Subrata Roy could be allowed to negotiate with property buyers in the conference room attached to the court complex inside the jail, subject to certain conditions.

Solicitor-General Ranjit Kumar was responding to Mr. Roy's plea seeking permission for shifting him from the prison cell to a Tihar jail guest house within its premises to enable him to hold negotiations with property buyers from 6 a.m. to 8 p.m. to sell his property in India

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and abroad. Mr. Ranjit Kumar told a three-judge Bench comprising Justices T.S. Thakur, Anil R. Dave and A.K. Sikri that the conference room was safe and secure from security point of view. Senior counsel Harish Salve and senior counsel K.T.S. Tulsi, appearing for Mr. Roy, accepted the S-G's proposal