IN THE SECURITIES APPELLATE TRIBUNAL
AT MUMBAI

DATED THIS THE 9TH DAY OF MARCH, 2026

CORAM: Justice P.S. Dinesh Kumar, Presiding Officer
Ms. Meera Swarup, Technical Member
Dr. Dheeraj Bhatnagar, Technical Member

Appeal No.250 of 2019
[Along with Misc. Application No.990 of 2022]

1. Sahara India Commercial
   Corporation Limited (SICCL)
   Sahara India Sadan, 2A Shakespeare
   Sarani, Kolkata-700071.

2. Sahara India
   Sahara India Bhawan,
   1 Kapoorthala Complex,
   Aliganj, Lucknow-226024. …Appellants

(By Mr. J. P. Sen, Senior Advocate with Mr. Kunal Vaishnav, Ms. Afreen Thanevala, Mr. Gautam Talukdar, Mr. Simranjeet Singh and Mr. Yajat Gulia, Advocates i/b. Vis Legis Law Practice for the Appellants.)

The Securities and Exchange Board of India
(SEBI), SEBI Bhawan, Plot No.C-4A,
G Block, Bandra Kurla Complex,
Mumbai. …Respondent

(By Mr. Chetan Kapadia, Senior Advocate with Mr. Suraj Chaudhary, Mr. Mihir Mody, Mr. Vijay Chockalingam, Mr. Karthik K.P. and Mr. Aavish Shetty, Advocates i/b. K. Ashar & Co. for the Respondent.)

With
Appeal No.251 of 2019

1. Shri Subrata Roy Sahara
   Sahara India House,
   New Hydrabad Colony,
   Lucknow-226007.

2. Shri J.B. Roy,
   F-170A, Sainik Farm,
   New Delhi-110062.

3. Shri O.P. Srivastava
   A-706, Sector-C,
   Mahanagar, Lucknow-226006.

4. Lt. Gen.(Retd.) A.S. Rao
   Aamby Valley City,
   Village Ambavane, Tal. Mulsh
   District-Pune, Maharashtra-412213.

5. Shri Ranoj Das Gupta
   80-32, Sonargaon, Narendrapur
   Station Road, Sonapur,
   Kolkatta-700150. …Appellants

(By Mr. J. P. Sen, Senior Advocate with Mr. Kunal Vaishnav, Ms. Afreen Thanevala, Mr. Gautam Talukdar, Mr. Simranjeet Singh and Mr. Yajat Gulia, Advocates i/b. Vis Legis Law Practice for the Appellants.)

The Securities and Exchange Board of India
(SEBI), SEBI Bhawan, Plot No.C-4A, G Block,
Bandra Kurla Complex,
Mumbai. …Respondent

(By Mr. Chetan Kapadia, Senior Advocate with Mr. Suraj Chaudhary, Mr. Mihir Mody, Mr. Vijay Chockalingam, Mr. Karthik

K.P. and Mr. Aavish Shetty, Advocates i/b. K. Ashar & Co. for the Respondent.)

With
Appeal No.252 of 2019

1. Mr. I. Ahmad
   B-41, Sector-H,
   Aliganj, Luknow-226024.

2. Mr. O.P. Dixit
   B-177, Sector-C, Indira Nagar,
   Lucknow-226016.

3. Mr. Asad Ahmad
   537-KHA, Nayapurva,
   Faizullaganj, Sitapur Road,
   Lucknow-226020.

4. Mr. A.N. Mukherjee
   B-604, Shanti Apartments,
   Charkop Village, M.G. Road,
   Khandivali (West), Mumbai – 400067.

5. Mr. C.B. Thapa
   36, Shiv Vihar Colony,
   Sector-5, Vikas Nagar,
   Lucknow-226022. …Appellants

(By Mr. Kazan Shroff, Advocate with Mr. Vikash Kumar, Advocate i/b. Lex Legal & Partners for the Appellants.)

The Securities and Exchange Board of India
(SEBI), SEBI Bhawan, Plot No.C-4A, G Block,
Bandra Kurla Complex, Mumbai. …Respondent

(By Mr. Chetan Kapadia, Senior Advocate with Mr. Suraj Chaudhary, Mr. Mihir Mody, Mr. Vijay Chockalingam, Mr. Karthik K.P. and Mr. Aavish Shetty, Advocates i/b. K. Ashar & Co. for the Respondent.)

THESE APPEALS ARE FILED UNDER SECTION 15T OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 TO SET ASIDE ORDER DATED OCTOBER 31, 2018, PASSED BY THE SEBI.

THESE APPEALS HAVING BEEN HEARD AND RESERVED FOR ORDERS ON JANUARY 7, 2026 COMING ON FOR PRONOUNCEMENT OF ORDER THIS DAY, THE TRIBUNAL MADE THE FOLLOWING:

ORDER

Per: Justice P. S. Dinesh Kumar, Presiding Officer

These set of three appeals are directed against the order dated October 31, 2018, passed by the WTM[1], SEBI[2] issuing directions to refund the amounts, disclose inventory, to issue public notice and debarring the appellants under the SEBI Act, 1992[3] ('SEBI Act' for short).

2. a) **Appeal No.250 of 2019** is filed by Sahara India Commercial Corporation Limited ("SICCL"/"the Company" for short) and M/s. Sahara India.

b) **Appeal No.251 of 2019** is filed by the five directors of the Company.

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[1] Whole Time Member
[2] Securities and Exchange Board of India
[3] Securities and Exchange Board of India Act, 1992

c) **Appeal No.252 of 2019** is filed by the four managers and the Company Secretary of the Company.

3. As these appeals arise out of a common impugned order, they were heard together and disposed of by this common order.

4. Brief facts of the case are:

a) SICCL is a public company incorporated on January 2, 1992 and is registered with RoC[4] Kolkata, West Bengal. Sahara India, the main entity of Sahara Group, is a partnership firm of Subrata Roy Sahara, Mrs. Swapna Roy, J. B. Roy and O. P. Srivastava.

b) The Sahara Group entities i.e. Sahara India Real Estate Corporation Limited ("SIRECL" for short) and Sahara Housing Investment Corporation Limited ("SHICL" for short) had issued OFCDs[5] from year 2008 and 2009 onwards.

c) During the investigation of OFCDs issued by SIRECL[6] and SHICL[7], SEBI discovered that another Sahara Group company, SICCL, had filed an RHP[8] and final prospectus with the RoC in West Bengal to raise ₹17,250 Crores through OFCDs.

d) As per SEBI's request, RoC provided copies of the RHP filed on June 29, 2001 and the prospectus filed on July 5, 2008.

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[4] Registrar of Companies
[5] Optionally Fully Convertible Debenture(s)
[6] Sahara India Real Estate Corporation Limited
[7] Sahara Housing Investment Corporation Limited
[8] Red Herring Prospectus

SICCL's balance sheet as on March 31, 2009, showed ₹6,922.32 Crore as outstanding OFCDs.

e) The MCA[9] conducted an inspection under Section 209A of the Companies Act, 1956 ('the Act of 1956' for short), and shared a report with SEBI highlighting violation of Sections 63, 68 and 73, along with details of claims for redemption or conversion of OFCDs for about ₹13,000 Crores and urged SEBI to take action. On analysis, SEBI found that SICCL had offered OFCDs from 1998 to 2009, raising at least ₹14,106 Crores from at least 1,98,39,939 (1.98 Crore) allottees from July 6, 1998 to June 30, 2008. There appeared *prima facie* violation of the SEBI Act, 1992, Companies Act, 1956, DIP Guidelines, 2000[10], ICDR Regulations, 2009[11], and Merchant Banker Regulations, 1992[12].

f) SEBI issued an SCN[13] on February 20, 2015, to SICCL, its directors, promoter, managers, and arranger (M/s Sahara India), alleging unlawful offer and raising of ₹14,106 crores through OFCDs during 1998 to 2009.

g) SEBI's main allegation is, offering OFCDs was a public offer in terms of Section 67 of the Companies Act, 1956 and consequently, the Company ought to have complied with Sections 56, 62, 63, 68, 73(1), 73(2) and 73(3) and

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[9] Ministry of Corporate Affairs
[10] SEBI (Disclosure and Investor Protection) Guidelines, 2000
[11] SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009
[12] SEBI (Merchant Bankers) Regulations, 1992
[13] Show Cause Notice dated February 20, 2015

Sections 117B and 117C of the Companies Act, 1956 and the relevant provisions of the DIP Guidelines read with ICDR Regulations. In substance, it was alleged that the appellants had violated the proviso to Section 67(3) of the Act of 1956 and therefore, the offer was liable to be treated as a public offer.

h) Appellants were given an opportunity to inspect the documents and file reply. They were finally heard on February 7, 2018 and thereafter, the impugned order has been passed.

5. We have heard Mr. J. P. Sen, learned Senior Advocate for the appellants in Appeal Nos.250 and 251 of 2019 and Mr. Kazan Shroff, learned Advocate for the appellant in Appeal No.252 of 2019 and Mr. Chetan Kapadia, learned Senior Advocate for the respondent-SEBI.

6. At the outset, Mr. Sen submitted that only 17 Crores worth of OFCDs out of ₹14,106 Crore ordered to be refunded are remaining for redemption. SICCL's contention with regard to repayment was summarily rejected. They had urged that (i) debentures worth ₹4,400 crores were converted into equity; (ii) a sum of ₹1527.76 Crores was refunded by SICCL through cheques; and (iii) the balance amount of ₹8157.80 crores was refunded in cash.

7. With regard to appellant's plea that debentures worth ₹4,400 crores were converted into equity, he submitted that Form-2 dated April 15, 2004 and September 21, 2010 were filed

with the RoC, enclosing a compact disc (CD) containing details of allotment for conversion of OFCDs into equity capital of the Company amounting to ₹1400 Crores and ₹3000 Crores respectively. SEBI's order records that the list of debenture holders was not provided, but the appellant was never called upon to provide the dates.

8. With regard to another sum of ₹1527.76 Crores, he submitted that it was refunded by cheques and the payment was made through verified bank channel yet the said plea has also been rejected.

9. With regard to amount of ₹8157.80 Crores refunded in cash, he submitted that the appellants had produced a CA certificate which certified the amount of refund made by the Company as on October 31, 2017. The said certificate has also been rejected by the SEBI on the ground that supporting documents were not produced by the Company, however, the Company was never called upon to produce the same. Further, there are affidavits of branch managers of M/s Sahara India stating that payments were made in cash to the investors have also not been considered. He submitted that such summary rejection of the cash payments is untenable.

10. Mr. Sen further submitted that in *Sahara India Real Estate Corporation Ltd. v. Securities and Exchange Board of India*[14], the Apex Court has distinguished the offers made by the SICCL and held that the proviso to Section 67(3) of the Companies Act,

[14]2013 (1) SCC 1

1956 would not apply to the issue of OFCDs under consideration. Relying on paragraph 253 of the said judgment, he submitted that the findings in paragraph Nos.22, 23 and 25 of impugned order are contrary to the observations made by the Apex Court. He submitted that OFCD's being issued prior to amendment, cannot be bought under the purview of the proviso.

11. He further submitted that the impugned order travels beyond the SCN and bifurcates the period of issuance of OFCDs which was absent in the SCN. The entire offer has to be considered as a whole and SEBI could not have bifurcated the period and hold that the issuance of securities after the amendment in 2000 did not fall within the ambit of *private placement* within Section 67(3) of the Companies Act, 1956. He contended that since the entire offer had commenced in the year 1998, the issue of the securities cannot attract the proviso to Section 67(3) of the Companies Act, 1956.

12. He further submitted that the SCN did not call upon the appellants to produce any evidences of persons to whom OFCDs were issued. The allegation that there was absence of evidence of persons to whom OFCDs were issued, is raised for the first time in the impugned order. This being a factual matrix, an opportunity ought to have been granted to the appellants to prove whether the offer was made to targeted persons. The RoC and MCA have recognized the issue as *private placement*.

13. Mr. Sen further submitted that to consider the applicability of Section 67(3) of the Companies Act, 1956, it is necessary to consider the date on which the offer is made and not the date on

which securities are issued or the date on which the allotment is made. The proviso to Section 67(3) of the Companies Act, 1956 would operate only if the offer was made after the said proviso was introduced. He submitted that the findings regarding *'domestic Concern'* and that 'targeted persons' identified by the Company do not satisfy the test of domestic concern, based on the parameters prescribed under the English Companies Act, 2006 is incorrect. The reliance placed by the WTM on the judgment of *Sahara*[15] by the Hon'ble Supreme Court of India is therefore, misconceived.

14. He further submitted that once an issue is made, it is a single issue. Also, SEBI has no jurisdiction under Section 55A of the Companies Act, 1956 as the said provision was inserted by Companies (Amendment) Act, 2000, while the issue of OFCDs opened on July 6, 1998 and therefore, the said provision cannot be made applicable retrospectively. Even otherwise, SEBI's jurisdiction is restricted to the listed companies and not to the companies intending to list their securities.

15. Mr. Sen further submitted that there is substantial delay in initiating the proceedings. The issue of OFCDs was opened on July 6, 1998 and the SCN was issued in February 2015 with a delay of 17 years. Further, necessary approvals were given by the competent authority for issuance the OFCDs. After a lapse of 17 years, SEBI could not have initiated any action.

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[15] Sahara India Real Estate Corporation Ltd. v. Securities and Exchange Board of India, 2013 (1) SCC 1

16. Mr. Sen further submitted that before appointing M/s Sahara India as an "arranger", proper applications were filed, permissions were sought and all formalities were completed by the Company. The RoC has duly approved the same and no objection was raised by the RoC at that point in time. The Merchant Banker Regulations read with the DIP Guidelines are not applicable to the facts of this case because the issue by SICCL was a private issue and not a public issue to bring it within the purview of the Merchant Banker Regulations read with the DIP Guidelines.

17. *Per Contra*, Mr. Chetan Kapadia, learned Senior Advocate for the SEBI submitted that with regard to conversion of debentures into equity shares, a belated application was made after the impugned order was passed. Similarly, regarding conversion of OFCDs of ₹3000 Crores, a CD containing the information was provided a month prior to passing the impugned order. He submitted that the SCN clearly calls upon the appellants to furnish the details of the OFCD holders whose amount is claimed to have been refunded with the mode of refund details to be furnished by way of CD/DVD. Hence, there is no violation of principles of natural justice.

18. He submitted that no repayments through cash is permissible in law. A single page CA report was filed suggesting repayments of ₹14,088 Crores and the CA report is only an opinion and not evidence. The affidavits of the branch managers and the investors were made to M/s Sahara India and not to SICCL.

19. He submitted that SEBI has inherent jurisdiction ever since 1992 to take cognizance under the SEBI Act against the issues related to public offers of the securities and the Companies (Amendment) Act, 2000 is only clarificatory in nature.

20. Mr. Kapadia submitted that SEBI has taken cognizance of the matter while investigating the issue of OFCDs in SIRECL[16] & SHICL[17] and consequent upon filing of DRHP[18] in 2008-09. He relied on *Oriental Bank of Commerce v. DDA*[19] and *SEBI v. Information Technologies (India) Ltd.*[20] and submitted that Hon'ble Delhi High Court has held that until the matter came to the notice of the proper person, who is authorized to file a complaint, it cannot be said that the knowledge of inspecting officer is the knowledge of DDA[21] in that case. Further, there is no prescribed period of limitation in the SEBI Act and the action was initiated within a reasonable time. With regard to the authority in *BRD Securities Ltd v. SEBI*[22] relied upon by the appellant Company, he submitted that the same was decided on the facts of that case and same is inapplicable, in this case.

21. With regard to the contention that offer was a *private placement,* Mr. Kapadia submitted that there is no document on record to show that the offer was made only to the targeted

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[16] Sahara India Real Estate Corporation Limited
[17] Sahara Housing Investment Corporation Limited
[18] Draft Red Hearing Prospectus
[19] (1984) 55 Comp Cas 81
[20] (2017) 200 Comp Cas 217
[21] Delhi Development Authority
[22] Appeal No.492 of 2021, decided on 05.01.2023 by the Securities Appellate Tribunal, Mumbai

persons. The resolution passed by the SICCL for the private placement does not specify or indicate the names and particulars of the proposed investors to whom the allotment was to be made and further the appellant Company failed to submit any proof of verification of declaration submitted to Sahara India "arranger" with regard to 1.98 Crore persons to whom OFCDs were allotted.

22. Mr. Kapadia further submitted that the points urged by the SICCL have been considered and already answered by the Hon'ble Supreme Court of India in *Sahara*[23]. He submitted that the description of invitees given by the appellant cannot lead to an inference that the offer made by the appellant Company is a matter of domestic arrangement between the persons making/ receiving the invitation/ offer and as such, the OFCDs in question did not satisfy the requirement of Section 67(3)(b) of the Act of 1956. He further submitted that post Companies (Amendment) Act, 2000, the offer of OFCDs by SICCL was an offer to public within the meaning of first proviso to Section 67(3) of the Act of 1956 having been made to more than 50 members.

23. With regard to the role of arranger (M/s. Sahara India), Mr. Kapadia submitted that it is apparent from the agreements between SICCL and arranger that SICCL intended to issue OFCDs to the persons dealing with the group companies or associates of Sahara Group, which can never be a domestic concern and the terms of the appointment of arranger was modified to facilitate provision of personalized service to OFCD holders since OFCD

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[23] Sahara India Real Estate Corporation Ltd. v. Securities and Exchange Board of India, 2013 (1) SCC 1

holder were scattered all over the country. The arranger (M/s. Sahara India) facilitated the issue which was not a domestic concern, as a Merchant Banker. He submitted that the appellants have fragrantly violated the law and prayed that the appeal may be rejected.

24. We have considered the rival submissions and carefully perused the records made available to us.

25. In the light of rival contentions, the points which arise for our consideration are:

i. Whether the OFCDs offered and issued are public offer with the regulatory jurisdiction of the SEBI?

ii. Whether the alleged delay in initiating the investigation is bona fide?

26. Undisputed facts of the case are:

i. SICCL and M/s Sahara India are the Sahara Group entities.

ii. SICCL had issued OFCDs to 1,98,39,939 persons and raised an amount aggregating to the tune of ₹14,106 Crores.

iii. The offer of allotments began in 1998 (July 6, 1998) and continued till June 30, 2008.

iv. M/s Sahara India was appointed as the sole arranger and acted as a Merchant Banker to the issue.

27. ***Re:*** **(i) Whether the OFCDs offered and issued are public offer with the regulatory jurisdiction of the SEBI**?

28. In order to appreciate the law governing the offer of debentures, we need to note the purport of Section 67 of the Companies Act, 1956, which reads thus:

> *"67. CONSTRUCTION OF REFERENCES TO OFFERING SHARES OR DEBENTURES TO THE PUBLIC, ETC.*
>
> *(1) Any reference in this Act or in the articles of a company to offering shares or debentures to the public shall, subject to any provision to the contrary contained in this Act and subject also to the provisions of sub-sections (3) and (4), be construed as including a reference to offering them to any section of the public, whether selected as members or debenture holders of the company concerned or as clients of the person issuing the prospectus or in any other manner.*
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> *(2) Any reference in this Act or in the articles of a company to invitations to the public to subscribe for shares or debentures shall, subject as aforesaid, be construed as including a reference to invitations to subscribe for them extended to any section of the public, whether selected as members or debenture holders of the company concerned or as clients of the person issuing the prospectus or in any other manner.*
>
> *(3) No offer or invitation shall be treated as made to the public by virtue of sub-section (1) or sub-section (2), as the case may be, if the offer or invitation can properly be regarded, in all the circumstances –*
>
> *(a) as not being calculated to result, directly or indirectly, in the shares or debentures becoming available for subscription or purchase by persons other than those receiving the offer or invitation; or*

> *(b) otherwise as being a domestic concern of the persons making and receiving the offer or invitation:"*

We may record that sub-section (1) covers the cases wherein an "*offer"* to public also includes an offer to selected members of the company concerned or as clients of the person issuing the prospectus or in any other manner; sub-section (2) covers the cases where an "*invitation"* is made to public in the similar cases as above; and sub-section (3) which is the subject matter before us carves out 2 exceptions to sub-section (1) and (2), stating that (a) it should not result in directly or indirectly an offer or invitation to the persons other than the ones to 'targeted persons'; (b) otherwise as being a domestic concern.

29. It is relevant to note that, there was an amendment to Section 67 of the Companies Act, 1956 by Companies (Amendment) Act, 2000, whereby a proviso was inserted to sub-section (3) of Section 67 of the Act of 1956 with effect from December 13, 2000 which reads thus:

> *"Provided that nothing contained in this sub-section shall apply in a case where the offer or invitation to subscribe for shares or debentures is <u>made to fifty persons or more</u>"*
>
> *(Emphasis Supplied)*

The said proviso sets a limit of fifty person to the exception contemplated in sub-section (3) of the Section 67 which means that any offer or invitation made under any circumstances to fifty or more persons shall be a public offer.

30. In the light of the above legal position, we shall examine the case on hand. For the sake of convenience, the total period (July 6, 1998 to June 30, 2008) under consideration is divided into two parts. Firstly, prior to amendment (before December 13, 2000) and secondly, post amendment (after December 13, 2000).

31. *Prior to amendment*: In the regime prior to amendment of Companies Act, 1956, Section 73 of the said Act, required every company intending to offer debentures to the public by issue of a prospectus to make an application to one or more recognized stock exchanges for permission. However, under Section 67 an exception was carved out to this. Under two specific circumstances, the company intending to offer debentures need not have applied to the Stock Exchanges. The first contingency is, where the debentures were available only to those receiving an invitation. The second contingency is, where the offer is domestic in nature. The present case does not fall in either category. Therefore, Section 73 of Companies Act, 1956 applied in full force. That means, before issuing debentures, company ought to have approached one or more recognized Stock Exchanges and sought permission. Admitted and undisputed position is, the Company did not approach any Stock Exchange for permission and thus, there was clear violation of said provision.

32. *Post amendment*: On December 13, 2000, a proviso was inserted to Section 67(3) of Companies Act, 1956 and it reads as follows:

> *"Provided that nothing contained in this sub-section shall apply in a case where the offer or invitation to subscribe for shares or debentures is made to fifty persons or more"*

33. As noted above, under Section 73 of Companies Act, 1956, every company offering debentures was required to obtain permission from a Stock Exchange. The exception was mentioned in Section 67(3) of Companies Act, 1956, under two contingencies mentioned above. Thus, the effect of the above proviso is that the two contingencies described in Section 67(3) (a) and (b) of Companies Act, 1956, shall not be apply, where the offer or invitation is made to more than fifty persons. This means, even if the offer is made directly to the subscriber (targeted person) or even as a domestic concern, the rigor of Section 73 of Companies Act, 1956 shall apply if the number of persons to whom the offer exceeded fifty persons. In the case on hand, the admitted position is, debentures have been issued to more than 1.98 Crore people in multiple tranches. Therefore, the Company was required to obtain a permission from a Stock Exchange before making such an offer. In substance, appellant has neither obtained permission from Stock Exchange as required under Section 73 of Companies Act, 1956, nor obtained certificate of registration under Section 12(1-B) of SEBI Act, 1992. Therefore, in our view, SEBI has ample power and jurisdiction to regulate appellant Company's activities. Therefore, we are of the clear opinion that appellant Company has violated Section 73 of Companies Act, 1956 and accordingly, we answer the first point for consideration in the ***affirmative***.

34. *Re*: **(ii) Whether the alleged delay in initiating the investigation is *bona fide*?**

Appellants' case is, it had offered debentures to the targeted individuals. For the reasons recorded hereinabove, we have rejected that contention and held that the Company had violated Section 73 of the Companies Act, 1956 which required the Company to obtain permission from a Stock Exchange to issue Prospectus. Admitted position is, no such permission was taken, but the Company collected money from more than 1.98 Crore people.

35. SEBI Act, 1992 was amended by Act No.9 of 1995, whereby, Section 12(1-B) was inserted with effect from January 25, 1995, which reads as follows:

> *"(1B) **No person shall** sponsor or cause to be sponsored or **carry on** or caused to be carried on any venture capital funds or **collective investment schemes** including mutual funds, **unless he obtains a certificate of registration from the Board** in accordance with the regulations:*
>
> *Provided that any person sponsoring or causing to be sponsored, carrying or causing to be carried on any venture capital funds or collective investment schemes operating in the securities market immediately before the commencement of the Securities Laws (Amendment) Act, 1995, for which no certificate of registration was required prior to such commencement, may continue to operate till such time regulations are made under clause (d) of sub-section (2) of section 30."*
>
> *[Emphasis supplied]*

36. Securities and Exchange Board of India (Collective Investment Schemes) Regulations, 1999 came in effect from October 15, 1999.

37. In view of Section 12(1-B) of the SEBI Act, 1992, the appellant was required to obtain a certificate of registration from the SEBI. Admittedly, the appellant has not obtained the same, but collected money by calling it as convertible debentures.

38. Insofar as appellants' contention with regard to delay is concerned, we find that SEBI was investigating into the affairs of other Sahara Group companies in 2009. SIRECL challenged SEBI's jurisdiction and it was concluded by the judgment of the Hon'ble Supreme Court of India in the matter of *Sahara*[24] in August 2012. Thereafter, SEBI received a report from MCA on August 27, 2013, pointing out certain violations and the SCN was issued on February 20, 2015. In the light of the fact that this case involves collection of money from more than 1.98 Crore people, the time taken by SEBI in initiating proceeding is not wholly unreasonableness as SEBI was required to look into several documents running to thousands of pages.

39. Hence, there is no substance in the ground of delay urged on the behalf of appellant Company. Accordingly, we answer the second point for consideration in the ***affirmative***.

40. So far as refund of amounts is concerned, we note that the SCN was issued on February 20, 2015, whereby the appellants were called upon to produce proof of refund of OFCDs. We note that the appellants have filed their replies on various dates i.e. May 21, 2015, December 29, 2016, February 6, 2018, February 12, 2018, March 10, 2018, and August 7, 2018. But the

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[24] Sahara India Real Estate Corporation Ltd. v. Securities and Exchange Board of India, 2013 (1) SCC 1

appellant has not placed any record to prove that money was actually refunded, except a certificate of Chartered Accountant. It was rightly contended on behalf of the SEBI that a Chartered Accountant's certificate cannot prove that actual payments made to 1.98 Crore people. Hence, appellants' contention that money has been refunded is also untenable and accordingly rejected.

41. So far as conversion of OFCDs of ₹1400 Crore into equity is concerned, appellant had filed a belated application to SEBI on December 11, 2018 i.e. after the impugned order was passed. Regarding conversion of OFCDs of ₹3000 Crore into equity is concerned, appellant provided information one month prior to passing of impugned order. Regarding repayment of ₹1527.76 Crore through cheques are concerned an application was filed on December 11, 2018 i.e. after passing the impugned order. Therefore, this contention of appellant is also unsustainable.

42. Further, so far as the allegations against the Directors and Managers and the Company Secretary are concerned, we find that the Red Herring Prospectus ('RHP' for short) was signed on 29th June 2001. However, the final Prospectus is dated July 5, 2008. These documents were signed by Mr. C. B. Thapa, Company Secretary based on a Power of Attorney given by Mr. Subrata Roy Sahara, Mr. O.P.Shrivastava, Mr. J.B.Roy, Lt.Gen.(Retd.), Mr. A.S. Rao, Mr. Y.N.Saxena and Mr. Ranoj Das Gupta, the Directors of SICCL. Further, the appellants in appeal No.252 of 2019 were the Managers and the Company Secretary at the relevant point of time and they were also the signatories to the RHP and Prospectus. It is noteworthy that the RHP and Prospectus were issued under the heading 'private placement'.

We have already held that the issue was a not a 'private placement' but a 'Public Issue'. The Company has collected ₹14,106 crores from 1.98 Crore investors and not repaid the same. In view of the gravity and ramification of the case, we are of the view that Directors are liable under Section 62 of the Companies Act, 1956.

43. So far as, appellant Nos.1 to 4 in appeal No.252 of 2019 are concerned, they were working as the managers and appellant No.5 as the Company Secretary. They have pleaded before the WTM that they were not the managers of the Company, within the meaning of definition of 'manager' under Section 2(24) of Companies Act, 1956. This submission was accepted by the WTM and they have been exonerated from the charge of 'officers in default' and it is held that they are not liable to refund on the basis of Section 73 of the Companies Act, 1956. However, the WTM has held them responsible under Section 62(1)(d) of the Companies Act, 1956 (Civil liability for mis-statement in Prospectus) and saddled joint and several liability along with Directors to pay back the loss suffered by the subscribers with interest at 15% p.a. It was argued that the Prospectus was signed by the Directors through their power agent and that the appellant Nos.1 to 4 are in no way connected with the affairs of the Company. Since, the Directors have signed the Prospectus, WTM's finding, holding the Company Secretary and the Managers liable to pay compensation is unsustainable.

44. Admitted position is, Directors had given 'Power of Attorney' to the Company Secretary to sign the Prospectus. Appellant No.5 is admittedly the power agent of the Directors.

Therefore, the Directors who are the principals become liable for act and omissions of their agent. The WTM has held that Managers are not liable under Section 73 of the Companies Act, 1956. In the facts of this case, in our opinion, appellants Nos.1 to 4 who are paid employees of the Company cannot be held liable for act and omissions of the Company and its Directors. We say so because the directors were signatories to the Prospectus through their Power of Attorney holder. In the result, their appeal deserves to be allowed.

45. So far as the co-appellant (M/s Sahara India) in Appeal No. 250 of 2019 is concerned, we note that it is also one of the Sahara Group entities and partnership firm. It was designated as an 'arranger'. It was contended by on the behalf of the said co-appellant that:

- It had obtained permission from RoC and thus, fully compliant with all legal requirements;
- The issue was a "private issue" and therefore, the Merchant Banker Regulations and DIP Guidelines were not applicable; and
- The appellant Company was not required to obtain any approval by the SEBI.

46. The co-appellant has admitted it had obtained permission from RoC. Thus, his connection and involvement with the SICCL is not in dispute. The co-appellant has acted as an arranger akin to a Merchant Banker. We have held that the appellant Company has not obtained permission under Section 73 of Companies Act 1956, nor obtained registration Section 12(1-B) of SEBI Act,

1992. Further, we have also rejected the co-appellant's contention that it's a private issue and held that registration under Section 12(1-B) of SEBI Act, 1992 was necessary. Thus, all three grounds urged by the co-appellant are devoid of merit and liable to be rejected.

47. In the light of above discussion, the following:

ORDER

1. Appeal Nos.250 and 251 of 2019 are ***dismissed***.
2. Appeal No.252 of 2019 is ***allowed***. Order passed by the WTM dated October 31, 2018 is set aside *qua* the appellants.
3. Pending interlocutory application(s), if any, stand disposed of.
4. No costs.

Justice P.S. Dinesh Kumar
Presiding Officer

Ms. Meera Swarup
Technical Member

Dr. Dheeraj Bhatnagar
Technical Member

09.03.2026
RHN

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