

Case: SEBI Vs Sahara – What Went Wrong?

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Abstract

Starting with a capital of just Rs. 2000 in the late 1970s, Subrata Roy started his company “Sahara”. By the passage of time and with his hard work, dedication and confidence the company grew up into a business giant “Sahara Group”. His business was founded on chit-funds or para-banking, raising deposits from small investors, sometimes even collecting single penny a day. Roy’s hard work paid back and today Sahara as Empire has real estate, finance, aviation, media, entertainment and retail etc in its periphery. The company’s net worth varies widely from one lac to Rs. 17,000 crores. At the same time, the source of Subrata Roy’s wealth remains a mystery - absolutely with no manufacturing, no trading and no presence in the stock market. Sahara case came to lime light when SEBI started to report Media about the money worth approx. Rs. 24,000 crores raised from estimated three crores investors. Two Sahara groups SIRCEL and SHILCL came under query for raising money through Optionally Fully Convertible Debentures (OFCD’s). SEBI alleged that Sahara has so far not returned the due money to their investors. Sahara claimed that before hearing of the case in apex court dated August 2012, they had made the payment of around Rs. 20,000 crores to their investors and due amount Rs. 5,120 crores was also deposited to SEBI. As per the guidelines of apex court, SEBI had to refund the deposited amount to the genuine investors after verification. The war of ideologies continues between SEBI and Sahara group. SEBI stands with queries about the possibility and feasibility of paying Rs. 20,000 crores in cash. In return Sahara confirms that it has investors from small towns and villages investing in petty amount worth Rs. 2000 to 20,000 and henceforth it is convenient to refund money in cash. SEBI claimed that during the verification process of investors, it found many cases with multiple claims by same investors, multiple addresses for single investors, untraceable addresses of investors etc and this has put Sahara group under question and suspicion. Hearing of the same case is scheduled dated 17 July, 2013 in the Apex court. Some of the loop holes need to be scrutinized and answered. The integrity of the business institutions and rights of the investors are under serious monitoring and this case may turn to be an eye opener for students, faculty and industry practitioners as well.

Keywords: Investors, Mystery, Optional Fully Convertible Debenture (OFCD), Sahara, SEBI, Verification

1. Introduction

Aptly described as the World’s Largest Family, Sahara India Pariwar is uniquely formed on the ethos of an emotionally integrated family. As the Managing Worker and Chairman of Sahara India Pariwar, Subrata Roy started his stupendous journey with a vision backed by the belief that “emotion is the key to success”.

In the year 1978, he opened a small office in Gorakhpur (Uttar Pradesh). He started with savings of Rs. 2000 and a Lambretta scooter. His office consisted of a table, two chairs and a staff of one clerk and a runner boy. Initially he

single handed took up the business of Deposits and Para-banking. Since then he has traversed a long journey with his footprint now visible in shores a far and promising to leave deep imprints across the international business landscape.

In a span of just 29 years, the Sahara India Pariwar has grown from just forty two depositors in all and a single establishment in the beginning to over 6.1 crores depositors through 1707 establishments, across the nation. He has created an empire of over Rs. 50,000 crores which is now recognized as one of the fastest growing business groups in the country.

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2. The Rise of an Empire

The humble beginning with one establishment and 42 customers, later paved the way for a much-fabled stratospheric rise. No wonder, the market value of the company's current asset base is USD 25.94 billion. Its combined workforce of over one million across 4163 establishments serves over 71 million esteemed customers. Today Sahara group is worth over \$10 billion and is the largest first generation conglomerate of India. The Sahara Group was termed by the Time magazine as 'The second largest employer in India after the Indian Railways.' The group is successfully diversified into Infrastructure and Housing (real state), Media (news channels and news-paper), Entertainment (TV channels and film production), Aviation and Health Care. It intends to move into Finance, Information Technology, Tourism and Hospitality, Life Insurance and Consumer Products, with many projects already in the pipeline. It also sponsors the Indian Hockey and Cricket team jerseys and other sports equipment. On March 22, 2010 in the IPL franchisee auction, Sahara group bought the Pune IPL team for Rs. 1,702 crores and named it "Pune Warriors India".

Apart from founding and scaling up his company to astonishing levels, Mr. Subrata Roy has instilled the feelings of oneness among the workers (so comes the "SAHARA PARIWAR") to inculcate the feelings of unity and vibrancy in the company.

3. Twist in the Journey of Success

It all started when in 2008 the two companies of the group Sahara India Real Estate Corporation Ltd. (SIRECL) and the Sahara Housing Investment Corporation Ltd. (SHICL) started raising funds through Red Herring Prospectus (RHPs), and had collected over Rs. 7,000 crores till October 16, 2009.

The two appellants companies have raised about Rs. 19,000 crores rupees from investors by issuance of Optionally Fully Convertible Debentures (OFCDs) by passing special resolution U/S 81(1A). Subsequently they filed RHPs to the concerned Registrar of Companies and specifically mentioned therein that the company did not intend to list the shares on any stock exchanges. It is indicated that the intention of the company was to carry out

infrastructural activities and the amount collected from the issue would be utilized in financing the completion of projects namely establishing/constructing the bridges, modernizing or setting up of airports, rail system or any other projects which might be allotted to the company from time to time.

One of the groups Company Sahara Prime City Limited intended to raise funds through listing of its shares and filed Prospectus to SEBI i.e. Securities and Exchange Board of India. While processing the prospectus, SEBI received two complaints - one on December 25, 2009 and the second on January 4, 2010 - alleging illegal means used by these two Companies in issuance of certain bonds, called OFCDs to the public throughout the country for many months. The complaint from Roshan Lal, a resident of Indore (written in Hindi) to the National Housing Bank, requested it to look into housing bonds issued by two companies of the Lucknow - headquartered Sahara group, Sahara India Real Estate Corporation and Sahara Housing Investment Corporation. Being a chartered accountant, Lal wrote in the small note, he found that the bonds, bought by a large number of investors, were not issued according to the rules. The National Housing Bank did not have the wherewithal to investigate the allegation, so it forwarded the letter to SEBI, the capital markets regulator. It was also alleged that Sahara group was issuing Housing Bonds without complying with Rule/Regulation/Guideline by RBI/MCA/NHB. SEBI also received complaint from "Professional Group of Investors Protections" dated 25.12.2009 and 4.1.2010 which prompted SEBI to ascertain the correct factual position.

4. Beginning of the Big Fight

It was then SEBI caught hold of Sahara, when SAHARA claimed of raising money worth approx. Rs. 24,000 crores raised from estimated 3 crores investors that too through para-chit banking money process. SAHARA contentions included that the investors' money sometimes went from Rs. 2000 to Rs. 20,000. Meanwhile, SEBI in Nov 2010, had restrained the above two companies from raising funds in the form of Optionally Fully Convertible Debentures (OFCD).

Sahara aggrieved against the notice of SEBI and moved to Allahabad High court, against which in December 2010, Sahara got SEBI order stayed in Lucknow bench

of Allahabad High Court. On 4th January, 2011 Supreme Court asks Sahara to give details of OFCD investors in response to a petition filed by SEBI. Later in January'11 itself SEBI issued public notice on OFCDs and also published advertisements cautioning investors not to invest in the two Sahara companies. Subsequently RBI also issued advertisement saying that it does not guarantee repayment of deposits taken by any Company in the Sahara group.

The SEBI notice said the high court vacated its 13 December, 2010 interim order (*HC had stayed the operation of SEBI's order*) on 7 April, 2011. "The investors are hereby informed that on April 7, 2011, the Hon'ble High Court inter alia observed that the information furnished by the petitioners to SEBI in the process of inquiry cannot be said to be any information in the eyes of law, within the directives issued by the court and that they do not find any ground to continue with the interim order", the SEBI notice said.

On 23rd June, 2011 SEBI ordered Sahara to refund money raised through OFCDs with 15% interest. On July 15, 2011 Supreme Court stayed SEBI order on refunds to depositors and directed Securities Appellate Tribunal (SAT) to decide the question of OFCDs. In August, 2011 Sahara moved SAT challenging SEBI's jurisdiction. October, 2011 SAT upheld the SEBI order and directed the two Sahara Companies to refund money to investors. In November, 2011 Sahara Companies challenged SAT order in Supreme Court.

The Supreme Court order said the contentions raised by the two Sahara group firms have been "examined, addressed and answered on all possible angles and dimensions".

"We also do not find any inconsistency in the views expressed by both of us", said the order passed by justices K. S. Radhakrishnan and Jagdish Singh Khehar referring to the August, 2011 order.

The apex court also dismissed Sahara's plea seeking permission for open court listing, intervention and directions/stay on the SC order.

According to Supreme Court Order the two Sahara companies had raised money from at least 29.61 million investors between April 2008 and 2011. According to market regulator SEBI the OFCD sale was in violation of public issue norms under the Companies law and the SEBI Act.

Finally on 31st August, 2012 Hon'ble Supreme Court upholds SAT order and delivers the verdict against Sahara

and asks the above mentioned two Companies to pay the collected amount i.e. Rs. 24,400 Crores + 15% Interest to its 2.21 Crores investors. However, the group in December 2012 was allowed to pay the money in three instalments, including an immediate payment of Rs. 5,120 crores, followed by an instalment of Rs. 10,000 crores in the first week of January, 2012 and remainder by the first week of February 2012.

Sahara deposited Rs. 5120 crores with the SEBI in December 2012. In December, 2012 the Supreme Court told SEBI to begin refunding the money to genuine investors from Rs. 5,120 crores deposited with it so far. The money was being refunded only in cases where SEBI has not found any multiplicity during its verification process. SEBI claimed that the list of investors provided by the two Sahara group has numerous multiplicities and other anomalies. There were numerous instances of one investor being named at hundreds of places, while there were also cases of multiple addresses for one single investor and hundreds of investors sharing the same address. However, the largest number of anomalies suspected by SEBI involved untraceable addresses and other investors' details.

5. Broken Trust and Shattered Faith of People

Not long after the Supreme Court judgment, Sahara made a startling claim that they had repaid almost all the money to investors, to the tune of about Rs. 20,000 crores, in just a matter of a few months. The regulator SEBI, which froze Sahara's bank accounts, disputed that claim, saying that details of investors those were repaid have not been properly provided.

In January, 2013 Supreme Court dismissed review petition on August order and further on February, 2013 said SEBI was free to freeze bank accounts and seize all properties of two group Companies for defying court's order by not refunding Rs. 24,000. SEBI followed directions from the Supreme Court and froze accounts and attached properties of two Sahara Companies, their promoters and Directors.

March, 2013 Sahara chief Subrata Roy moved SAT against SEBI order freezing his bank accounts and to attach personal assets. SAT denied interim relief to Roy whose accounts were frozen by SEBI. SEBI further filed plea in SC for detention of Subrata Roy and other two

Directors. Meanwhile Subrata Roy had also challenged SEBI chairman to have live debate on TV.

On October 28, 2013, Supreme Court had directed Sahara to hand over title deeds of properties worth Rs. 20,000 crores to SEBI. It had also added that the failure to do so would mean that Sahara boss Subrata Roy would not be allowed to leave India. On that date, the judges had said “You indulge too much in hide and seek. We cannot trust you anymore. There is no escape for you and the money has to come”.

The Supreme Court on November 1, 2013 allowed Sahara Chief Subrata Roy and two other Directors to travel abroad, but said if the property title deeds worth 20,000 crores are not submitted to SEBI in three weeks Mr Roy has to come back to India.

On November 21, 2013 SEBI told the top court that Sahara overvalued its properties and did not hand over all original title deeds of the assets. Sahara gave SEBI documents of two plots of land. One of the two properties is a 106-acres land in Versova, a western suburb, which according to it is worth around Rs. 19,000 crores and the other is a 200-acre land in Vasai, which it estimates to be worth about Rs. 1,000 crores. The valuation of the properties was challenged by SEBI. While disagreeing with SEBI's view that the properties offered earlier as security for Rs. 20,000 crores were overvalued, the group said in a public notice published in various newspapers that it would “submit title deeds relating to other properties of Sahara aggregating Rs. 20,000 crores, instead of debating any further on the issue raised”. The fresh proposal followed after the Supreme Court restrained Sahara group from selling any properties and restrained Subrata Roy and three other top executives from leaving the country without the court's permission.

The setback came on 2nd January, 2014 when Subrata Roy failed to get relief from SC that declined to pass immediate orders granting him permission to travel abroad for his business meetings. Further, on 9th January, 2014 Supreme Court warned of a CBI probe against the Sahara group if it failed to reveal the source of Rs. 22,000 crores it claimed to have refunded to 33 million of its investors.

Supreme Court on 20th February, 2014 had to direct Subrata Roy to appear before it on 26th February, 2014. He failed to appear before the apex court and the bench of Justice Radhakrishnan and Justice Khehar said “*This is Supreme Court. You were categorically refused exemption from personal appearance on Tuesday. Yet, you decide not to appear. You have no respect for*

Supreme Court. If other Directors can be here, so can he. We will issue non-bailable arrest warrant” and ordered arrest.

6. The Chief - Behind the Bars

Sahara chief served an unconditional apology (excuse of his mother's illness) for not appearing in the Supreme Court. Lucknow police armed with court's arrest warrant visited his house but failed to find on 27th February, 2014 but could succeed in arresting him on 4th March, 2014.

Supreme Court said Roy will not be released from custody till he comes up with a concrete plan to pay up the Rs. 24,000 crores. Two group Directors will also remain in custody till the court is satisfied that its order is being fulfilled. Unlike the previous hearings, the court did not accept Roy's persistent claim that he had already repaid his investors in cash.

“*You can't make payment in cash as it is contrary to law. You have to make payment through demand draft or cheque*”. If Roy did not identify the people who were repaid the cash, the money would be sent to the government's coffers. While the court accepted Roy's apology for not turning up on 26th February, 2014. It refused to accept his emotional statements, having been let down repeatedly by his promises. The court decided that it did not have faith in him and sent him back to custody.

SEBI lawyers objected to Sahara repayment proposal saying that the first installment of Rs. 2500 crores is not attractive enough as the total amount to be refunded to investors is a whopping Rs. 37,000 crores.

The fresh proposal was submitted by Senior advocate C A Sundaram on 26th March, 2014 that Sahara will pay Rs. 20,000 crores to SEBI in parts. First was that Rs. 2,500 crores will be paid within 3 days of lifting of restrictions on operation of bank accounts. Next repayments will be in June 2014 (Rs. 3,500 crores), September 2014 (3,500 crores), December 2014 (Rs. 3,500 crores) and March 2015 (Rs. 3,500 crores).

Justice Radhakrishnan and Justice Khehar did not accept it and needed time to go through the proposal. In the next hearing the SC termed the revised proposal as an ‘insult to the court’ and rejected the group's plea to release Roy.

Senior Advocate Ram Jethmalani said that this bench (of Justice Radhakrishnan and Justice Khehar) was prejudiced against Sahara persons and Sahara group of

companies. Roy's writ petition filed through Counsel Keshav Mohan questioned the correctness of 4th March, 2014 order. It was expressed that the capacity to pay Rs. 10,000 crores for bail was not checked and the order was passed. The petition should go before another bench which should examine the questions about the serious illegality and unconstitutionality of 4th March, 2014 order, the petitioner said.

On 27th March, 2014 in a statement, Sahara Advocate Keshav Mohan said the bail precondition of paying upfront Rs. 10,000 crores was "unusual" and "was not surety for securing the presence" of Roy "but a mode of recovery". There is also an embargo on sale of assets and the bank accounts have also been frozen. Further the title deeds of assets worth Rs. 20,000 crores are with SEBI.

7. 'Sale' for 'Bail' that Eventually Failed

Subrat Roy told his inability to pay Rs. 10,000 crores for bail to Supreme Court. The counsels of Sahara has told the Supreme Court that the Company officials are in touch with some international buyers to raise money to get the bail but for that they wanted Roy to come out of jail for further negotiations and making decisions. But Supreme Court did not shown any sign of accepting this ground for granting the bail.

Subrata Roy told Supreme Court through his counsel Rajiv Dhavan that 4th March, 2014 order of putting him in "coercive detention" was illegal and demanding Rs. 10,000 crores for bail (half in cash and half through bank guarantee) was passed in transgression of jurisdiction. Rajiv Dhavan expressed the bench was not even-handed and believed everything to be true what SEBI said.

New Bench Formed - The new bench headed by Justice T. S. Thakur and Justice A. K. Sikri and Justice A. K. Dave was formed in May, 2014 that raised hope for early release of Subrata Roy from Tihar jail. Justice K. S. Radhakrishnan retired and Justice Khehar rescued from this case. It is understood that Justice Khehar had serious objections to the tone of senior advocates engaged by Roy.

In June, 2014 Roy's counsels assured to deposit Rs. 5000 crores by selling off high value hotels in London and New York and Rs. 5,000 through Bank guarantee. The court permitted the sale and asked for a concrete proposal for bail. Left with no option, Sahara deposited Rs. 3,000 crores with market regulator SEBI for the bail of Subrata

Roy and other two directors (Ashok Roy Choudhury and R. S. Dubey). The counsels reiterated that the rest of money and the bank guarantee would be arranged soon. Sahara's plea for Roy's release or putting him in a government guest house got rejected. In November, 2014 Sahara group had to sell its 265 acre sprawl in Vasai for Rs. 1,111 crores. This only proved to be a peanut in the hour of need.

The Supreme Court in March, 2015 gave an ultimatum to the Sahara group to pay dues of Rs. 40,000 crores to investors in a month or face auction of group assets. The group requested through senior advocate Kapil Sibal for last opportunity to negotiate deal for mortgage of its three hotels abroad - Grosvenor House in London and Plaza and Downtown in New York to raise money. The Court gave the last opportunity and warned to appoint a receiver to recover money if the group fails again. Court also repeated that Rs. 10,000 crores is required for securing Bail for Roy.

In March, 2015 itself Supreme Court gave Sahara group 90 days to finalize plans for sale of properties both India and abroad for the Bail of Roy and two directors. The group by now had paid Rs. 3,800 crores and was short by Rs. 1,200 crores. After some desperate attempts made by the group to sell its three hotels abroad a ray of hope came by way of Mirach Capital which offered to buy all three overseas hotels. Senior Advocate, P. Chidambaram appeared for Mirach and requested to submit the sealed offer. The Court permitted and clarified that it would not be opened till Sahara had exhausted its option of raising money in 90 days.

Subrata Roy told Supreme Court in May, 2015 that he had managed Rs. 5,000 crores to fulfill bail condition. Meanwhile SEBI in its third attempt, asked the bondholders of two Sahara firms to submit their claims along with the proof of investments.

In the next hearing of June, 2015 the Supreme Court gave no respite to Roy and refused to release him and two other directors from Tihar unless group deposits Rs. 10,000 with market regulator SEBI as per 26th March, 2014 bail condition and specified that group's total liability had now swelled to Rs. 36,000 crores.

8. Competitive Bidding

Making a first in history, the Supreme Court turned auctioneer in July, 2015 and achieved stunning results. Three judge SC bench made the two parties - Samridhi

Developers and Gorakhpur Real Estate Developers bid in open court for the 45 acre plot in Gorakhpur. The bidding was stopped at Rs. 150 crores and directed the two parties to deposit 25% of the committed amount i.e. Rs. 37.50 crores in the SEBI-Sahara account by July 31, 2015.

Another relief came from Billionaire brothers David and Simon Reuben who proposed to take over the crisis hit Sahara's Bank of China loan for its three hotel properties thus averting a default triggered sale of the iconic Grosvenor House hotel in London.

Troubles shot up in September, 2015 when the Supreme Court refused to take note of the deal of Sahara with Helvetia group. The group tried to convince the Court about inking a Rs. 100,000 crores deal for development of its prized Aamby Valley Project with British Virgin Island registered Helvetia group. The Court formally sought Sahara group's response on appointment of receiver for auction of its assets instead.

On SEBI's plea to appoint a receiver for assets in September, a fresh application was received by the Court. The Court issued notices returnable in four weeks after which SEBI could take two weeks for rejoinder. The deadline was mid-November, 2015. Concurrently Sahara's November-end deadline for repaying the Bank of China loan taken over by Reuben Brothers was also approaching.

It was also requested by Sahara to the court to expedite verification of the truckloads of documents it gave to SEBI. SEBI had been served copies of these applications according to people familiar with the development.

SEBI afterwards claimed that the group's dues swelled to over Rs. 40,000 crores due to mounting interest liabilities. The court had in the past reiterated that according to the 2012 order refunds were not supposed to have been made directly to investors and the group had to

deposit the dues to SEBI first. Sahara's inability to comply with these directions landed the chief Subrata Roy in Tihar jail.

Justice T. S. Thakur (currently the Chief Justice of India) in November 2015 directed SEBI to file an application seeking receivership. This came in the light of several attempts made by Sahara group to raise money from overseas and domestic assets did not succeed.

The Supreme Court heard the plea of market regulator SEBI in February, 2016 seeking appointment of a Receiver for taking control of assets of two firms of beleaguered Sahara Group to make payment of over Rs. 36,000 crores to its investors. Senior Advocate Arvind Datar appeared for the SEBI and sought an interim order with regard to repayment of money by the group and appointment of Receiver. "There has been no development on repayment front during last three months. We need some interim order", Datar said emphatically. The Sahara Group had earlier responded to Court in relation to appointment of receiver that some European corporate had offered to lend Euro 720 million (Rs. 5,000 crores) to bail out Roy. SEBI was seeking appointment of Receiver on the ground that Roy's two firms were not in a position to comply with apex court's August 31, 2012 order to refund the money to investors.

During the earlier hearing also, the bench had said it was evident that there was difficulty for the group in selling its properties to arrange Rs. 36,000 crores for making the payment in the SEBI-Sahara account since Roy is in jail and the sale of properties can be done by appointing a Receiver.

The Supreme Court in March, 2016 directed Securities and Exchange Board of India (SEBI) to sell Sahara Group properties whose title deeds are lying with the capital market regulator.