IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(s). 8643 OF 2012

SAHARA INDIA REAL ESTATE EXCH.COR.LD.&AN **Appellant (s)**

VERSUS

SECURITIES & EXCH.BOARD OF INDIA **Respondent(s)**

WITH

W.P.(C)No.527 of 2012

O R D E R

1. This appeal is directed against the judgment and order dated 29th November, 2012, passed by the Securities Appellate Tribunal, in Appeal No.221 of 2012, holding that the same was premature and was not, therefore, maintainable.

2. In earlier appeals, being C.A.No.9813 of 2011 and C.A.No.9833 of 2011, this Court was concerned with the powers of the Securities and Exchange Board of India (SEBI) under Section 55A(b) of the Companies Act, 1956, to administer various provisions relating to issue and

transfer of securities to the public by listed companies or companies which intend to get their securities listed on any recognised Stock Exchange in India and also the question whether Optionally Fully Convertible Debentures, offered by the appellants, should have been listed on any recognised Stock Exchange in India, being Public Issue under Section 73 read with Section 60B and allied provisions of the Companies Act. The said appeals were heard and finally disposed of on 31st August, 2012, with the following directions:-

> **"1. Saharas (SIRECL & SHICL) would refund the amounts collected through RHPs dated 13.3.2008 and 16.10.2009 along with interest @ 15% per annum to SEBI from the date of receipt of the subscription amount till the date of repayment, within a period of three months from today, which shall be deposited in a Nationalized Bank bearing maximum rate of interest.**
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> **2. Saharas are also directed to furnish the details with supporting documents to establish whether they had refunded any amount to the persons who had subscribed through RHPs dated 13.3.2008 and 16.10.2009 within a period of 10 (ten) days from the pronouncement of this order and it is for the SEBI (WTM) to examine the correctness of the details furnished.**
>
> **3. We make it clear that if the documents produced by Saharas are not found genuine or acceptable, then the SEBI**

(WTM) would proceed as if the Saharas had not refunded any amount to the real and genuine subscribers who had invested money through RHPs dated 13.3.2008 and 16.10.2009.

4. Saharas are directed to furnish all documents in their custody, particularly, the application forms submitted by subscribers, the approval and allotment of bonds and all other documents to SEBI so as to enable it to ascertain the genuineness of the subscribers as well as the amounts deposited, within a period of 10 (ten) days from the date of pronouncement of this order.

5. SEBI (WTM) shall have the liberty to engage Investigating Officers, experts in Finance and Accounts and other supporting staff to carry out directions and the expenses for the same will be borne by Saharas and be paid to SEBI.

6. SEBI (WTM) shall take steps with the aid and assistance of Investigating Authorities/Experts in Finance and Accounts and other supporting staff to examine the documents produced by Saharas so as to ascertain their genuineness and after having ascertained the same, they shall identify subscribers who had invested the money on the basis of RHPs dated 13.3.2008 and 16.10.2009 and refund the amount to them with interest on their production of relevant documents evidencing payments and after counter checking the records produced by Saharas.

7. SEBI (WTM), in the event of finding that the genuineness of the subscribers is doubtful, an opportunity shall be afforded to Saharas to satisfactorily establish the same as being legitimate and valid. It shall be open to the Saharas, in such an eventuality to associate the concerned subscribers to

establish their claims. The decision of SEBI (WTM) in this behalf will be final and binding on Saharas as well as the subscribers.

8. SEBI (WTM) if, after the verification of the details furnished, is unable to find out the whereabouts of all or any of the subscribers, then the amount collected from such subscribers will be appropriated to the Government of India.

9. We also appoint Mr. Justice B.N. Agrawal, a retired Judge of this Court to oversee whether directions issued by this Court are properly and effectively complied with by the SEBI (WTM) from the date of this order. Mr. Justice B.N. Agrawal would also oversee the entire steps adopted by SEBI (WTM) and other officials for the effective and proper implementation of the directions issued by this Court. We fix an amount of Rs.5 lakhs towards the monthly remuneration payable to Mr. Justice B.N. Agrawal, this will be in addition to travelling, accommodation and other expenses, commensurate with the status of the office held by Justice B.N. Agrawal, which shall be borne by SEBI and recoverable from Saharas. Mr. Justice B.N. Agrawal is requested to take up this assignment without affecting his other engagements. We also order that all administrative expenses including the payment to the additional staff and experts, etc. would be borne by Saharas.

10. We also make it clear that if Saharas fail to comply with these directions and do not effect refund of money as directed, SEBI can take recourse to all legal remedies, including attachment and sale of properties, freezing of bank accounts etc. for realizations of the amounts.

> **11. We also direct SEBI(WTM) to submit a status report, duly approved by Mr. Justice B.N. Agrawal, as expeditiously as possible, and also permit SEBI (WTM) to seek further directions from this Court, as and when, found necessary.**

The appeals were, therefore, dismissed with the aforesaid directions.

3. As indicated above, the present appeal is directed against the order of the Securities Appellate Tribunal, in the Appeal, being No.221 of 2012, which had been filed on 27th November, 2012, complaining that the SEBI had not accepted the documents, which were to be furnished to it by the appellants, since they were tendered a couple of days after the stipulated period.

4. We are not inclined to interfere with the substance of the order of the Tribunal impugned in this appeal. The only question which we are inclined to consider is whether the time for implementing the directions contained in the earlier order of 31st August, 2012, may be extended or not.

5. Mr. Gopal Subramanium, learned senior counsel, submitted that after the aforesaid

order had been passed, certain amounts had been paid to investors and that according to them a sum of ` 5120/- Crores remained to be paid to SEBI, out of the amount already indicated, for the purpose of distribution to the investors.

6. Having heard learned senior counsel, Mr. Gopal Subramanium, appearing for the appellants, Mr. Datar, for SEBI and Mr. Vikas Singh, appearing for Universal Investors Association & Ors., who has filed a separate Writ Petition, we are not inclined to accept the submissions made by Mr. Gopal Subramanium, at their face value, since, in the order of 31st August, 2012, it has been indicated that if any payments had been made, the details thereof, along with supporting documents, were to be submitted to SEBI to verify the same. Essentially, the appellants have failed on both counts, since neither the amount indicated in the order, together with interest @ 15% per annum, accrued thereon, has been paid, nor have the documents been submitted within the time stipulated in the said order. The reliefs prayed for in the writ petition filed by Universal Investors Association,

amounts to a review of the order passed by this Court on 31.08.2012.

7. We, therefore, dispose of the appeal and the writ petition, as also the intervention applications with the following directions:-

(I) The appellants shall immediately hand over the Demand Drafts, which they have produced in Court, to SEBI, for a total sum of ` 5120/- Crores and deposit the balance in terms of the order of 31st August, 2012, namely, ` 17,400/- Crores and the entire amount, including the amount mentioned above, together with interest at the rate of 15 per cent, per annum, with SEBI, in two installments. The first installment of ` 10,000/-Crores, shall be deposited with SEBI within the first week of January, 2013. The remaining balance, along with the interest, as calculated, shall be deposited within the first week of February, 2013. The time for filing documents in support of the refunds made to any person, as claimed by

the appellants, is extended by a period of 15 days. On receipt of the said documents, SEBI shall implement the directions contained in the order passed on 31st August, 2012. In default of deposit of the said documents within the stipulated period, or in the event of default of deposit of either of the two installments, the directions contained in paragraph 10 of the aforesaid order dated 31st August, 2012, shall immediately come into effect and SEBI will be entitled to take all legal remedies, including attachment and sale of properties, freezing of bank accounts etc. for relisation of the balance dues.

8. Let a copy of this order be made available to Mr. Justice B.N. Agrawal, who has been appointed by this Court, by tomorrow, to enable His Lordship to oversee the working of the Order of 31st August, 2012, and this Order passed by us today.

9. Having regard to the nature of the case, the appellants shall bear the costs of the

respondent(s) in these proceedings.

10. In the event any excess payment is found to have been made by the appellants by virtue of the earlier Order and this Order, the same shall be refunded to the appellants by SEBI.

.....CJI.
(ALTAMAS KABIR)

.....J
(SURINDER SINGH NIJJAR)

.....J
(J.CHELAMESWAR)

NEW DELHI;
December 05, 2012.

ITEM NO.4 COURT NO.1 SECTION XVII

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS
CIVIL APPEAL NO(s). 8643 OF 2012

SAHARA INDIA REAL ESTATE EXCH.COR.LD.&AN Appellant (s)

VERSUS

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SECURITIES & EXCH.BOARD OF INDIA Respondent(s)

(With appln(s) for ex-parte stay,permission to file synopsis and list of dates and office report))

WITH
W.P.(C)No.527 of 2012
(with office report)

Date: 05/12/2012 This Appeal was called on for hearing today.

CORAM :
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SURINDER SINGH NIJJAR
HON'BLE MR. JUSTICE J. CHELAMESWAR

For Appellant(s) **Mr. Gopal Subramanium, Sr. Adv.**
Mr. Mukul Rohatgi, Sr. Adv.
Mr. Ashok K.Parija, Sr. Adv.
Mr. Satish Kishanchandani, Adv.
Mr. Gaurav Kejriwal, AOR
Mr. Keshav Mohan, Adv.
Mr. Jatin Pore, Adv.
Mr. Devansh Mohta, Adv.
Mr. Mahesh Agarwal, Adv.
Mr. Gaurav Choudhary, Adv.
Mr. Nishint Agarwal, Adv.

Mr. Ashok K.Parija, Sr. Adv.
Mr. Gaurav Kejriwal, AOR

In WP 527/12 **Mr. Vikas Singh, Sr. Adv.**
Mr. Rudreshwar, Adv.
Mr. Chandra Prakash, AOR.

For Respondent(s) **Mr. Arvind P.Datar, Sr. Adv.**
Mr. Pratap Venugopal, Adv.
Ms. Surekha Raman, Adv.
Ms. Nupur Kanungo, Adv.
for M/S. K.J. John & Co.,Advs.

Mr. Shailendra Singh, Adv.
/intervenor **Mr. Kaushal Yadav, AOR.**

UPON hearing counsel the Court made the following

O R D E R

The appeal and the writ petition, as also the intervention applications are disposed of

in terms of the signed order.

Let a copy of this order be made available to Mr. Justice B.N. Agrawal, who has been appointed by this Court, by tomorrow, to enable His Lordship to oversee the working of the Order of 31st August, 2012, and this Order passed by this Court today.

Having regard to the nature of the case, the appellants shall bear the costs of the respondent(s) in these proceedings.

(Sheetal Dhingra) (Juginder Kaur)
COURT MASTER Assistant Registrar

[Signed order is placed on the file]