

**BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA  
CORAM: PRASHANT SARAN, WHOLE TIME MEMBER**

**ORDER**

**Under Regulation 28 (2) read with Regulation 38 (2) of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008**

**IN THE MATTER OF SAHARA MUTUAL FUND**

**In respect of:**

- 1. Sahara Mutual Fund [SEBI Registration No. - MF/030/96/0];**
- 2. Sahara Asset Management Company Private Limited, the Asset Management Company;**
- 3. Board of Trustees namely Mr. S.R. Hegde, Mr. P.V. Rao, Mr. A.K. Thakur and Dr. D.P. Shastri;**
- 4. Sahara India Financial Corporation Limited, the Sponsor.**

---

**Date of Hearing: February 09, 2015**

**Appearance:** Mr. Sudeep Seth, Advocate,  
Mr. Sudhir Kaup, Compliance Officer.

**For SEBI:** Mr. Parag Basu, Chief General Manager,  
Ms. Versha Agarwal, Assistant General Manager,  
Mr. Pradeep Kumar, Assistant General Manager,  
Mr. T. Vinay Rajneesh, Assistant General Manager,  
Ms. Sonia Shah, Assistant Manager.

- 
1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') had conducted an examination of the conditions for the registration of Sahara Mutual Fund (hereinafter referred to as '*Sahara MF*') in order to analyse whether Sahara Asset Management Company Private Limited (hereinafter referred to as '*Sahara AMC*'), its Board of Trustees namely Mr. S. R. Hegde, Mr. P. V. Rao, Mr. A. K. Thakur and Dr. D. P. Shastri (hereinafter collectively referred to as the 'trustees') and the sponsor of Sahara MF namely Sahara India Financial Corporation Limited (hereinafter referred to as '*Sahara Sponsor*') (hereinafter all collectively referred to as the 'noticees' and individually by the respective names) fulfill the criteria for determining 'the fit and proper person' in the light of the SEBI order dated June 23, 2011. I note that SEBI vide its order dated June 23, 2011, had directed one Sahara India Real Estate Corporation Limited

(hereinafter referred to as 'SIRECL') and Sahara Housing Investment Corporation Limited (hereinafter referred to as 'SHICL') **to refund the money collected through Optionally Fully Convertible Debentures (OFCDs) from the investors.** Vide this order, Mr. Subrata Roy Sahara, Ms. Vandana Bharagava, Mr. Ravi Shankar Dubey and Mr. Ashok Roy Choudhary, being the promoters/ directors of SIRECL and SHICL also were restrained from associating themselves with any listed public company and any public company which intends to raise money from the public, till such time the aforesaid payments were made to the satisfaction of SEBI. This order of SEBI was confirmed by the Hon'ble Securities Appellate Tribunal (hereinafter referred to as the 'Hon'ble SAT') vide its order dated October 18, 2011. Thereafter, the appeals filed by SIRECL and SHICL before the Hon'ble Supreme Court of India vide order dated August 31, 2012 also got dismissed.

2. Pursuant to its examination, SEBI initiated the proceedings against the noticees in terms of the SEBI (Intermediaries) Regulations, 2008 (hereinafter referred to as 'the Intermediaries Regulations'), by appointing a Designated Authority (hereinafter referred to as 'DA') under Regulation 24 of the Intermediaries Regulations vide order dated June 09, 2014. The DA enquired into the alleged violation of the provisions of the Regulation 21 read with Regulation 22 of the SEBI (Mutual Fund) Regulations, 1996 (hereinafter referred to as 'the MF Regulations'), SEBI Circulars bearing number MFD/CIR/11/354/2001 dated December 20, 2001, MFD/CIR/13/16799/2002 dated August 29, 2002 and CIR/IMD/DF/14/2013 dated September 11, 2013 (hereinafter collectively referred to as 'the SEBI Circulars') by **Sahara MF and Sahara AMC and its trustees. Sahara Sponsor** was alleged to be no longer a 'fit and proper person' and therefore, was alleged to have violated the provisions of Regulation 7 read with Regulation 10 of the MF Regulations. The DA submitted a common Report dated October 14, 2014, in terms of the Regulations 27 of the Intermediaries Regulations while holding that Sahara MF along with Sahara AMC & its trustees and Sahara Sponsor are no longer 'fit and proper' persons to carry out the business of Mutual Fund and recommended that the certificate of registration of Sahara MF be cancelled.
3. After considering the Report, SEBI issued a common Show Cause Notice dated November 11, 2014 (hereinafter referred to as 'SCN') under Regulation 28(1) of the Intermediaries Regulations, to the noticees, asking them to show cause as to why the action of proposed cancellation should not be taken against them and why they should not be directed to transfer the

activities to another person holding a valid 'certificate of registration' to carry on such activity and allow the clients/ investors to withdraw/ transfer their securities or funds held in the custody or to withdraw any assignment given to these, without any additional cost to such client/ investor, as specified in Regulation 32(2) of Intermediaries Regulations or as deemed fit. The noticees were advised to reply to the SCN within twenty one (21) days from the receipt thereof. SEBI informed the noticees that in case of failure to reply, it would be presumed that they had no reply to offer and that the matter would be proceeded on the basis of the evidence available on record. A copy of the Enquiry Report was also forwarded to the noticees along with the said SCN.

4. Sahara MF, Sahara AMC and the trustees namely Mr. S.R. Hegde, Mr. P.V. Rao vide respective letters all dated November 29, 2014; the other trustees namely Mr. A.K. Thakur and Mr. P.P. Shastri vide respective letters both dated December 01, 2014 and Sahara Sponsor vide its letter dated December 02, 2014, sought extension of time for submitting the reply to the SCN. SEBI vide letters dated December 09, 2014, granted time up to December 30, 2014, to the noticees for replying to the SCN.
5. Sahara MF, Sahara AMC and Sahara Sponsor vide respective letters all dated December 27, 2014, submitted their replies to the SCN. The Trustees namely Mr. S.R. Hegde, Mr. P.V. Rao and Mr. A.K. Thakur vide their respective letters all dated December 27, 2014 and Mr. P.P. Shastri vide his letter dated December 30, 2014, filed their replies adopting the reply submitted by Sahara MF and Sahara AMC. Before proceeding further, an opportunity for personal hearing as requested was granted to the noticees on February 09, 2015.
6. Before the designated date of hearing, Sahara Sponsor and Sahara AMC vide their respective letters both dated February 04, 2015 and Mr. S.R. Hegde, Trustee vide his letter dated February 05, 2015, raised a preliminary objection on the maintainability of the proceedings in the light of the order of Hon'ble Supreme Court of India in the Contempt Petition (C) 412 of 2012 in Civil Appeal No. 9813 of 2011 (*SEBI Vs. Sahara India Real Estate Corporation Limited*). It has been said that Hon'ble Supreme Court vide order dated July 17, 2013, had called for appeals and writ petition pending before the Hon'ble Securities Appellate Tribunal and the Hon'ble High Court with a note of caution to Hon'ble High Courts, Hon'ble Securities Appellate Tribunal and any other Forum **to desist from passing any orders against the orders passed by SEBI** in implementation of the order of Hon'ble Supreme Court dated August 31, 2012. It was argued that in the present proceeding SEBI will exercise quasi judicial power and it will not be

appropriate to hear the matter as it will impinge upon the pending judicial proceedings of SIRECL before the Hon'ble Supreme Court. Any order passed by SEBI in the present proceedings, will have bearing upon the status of parties and stage of proceedings pending before the Hon'ble Supreme Court, which are yet to attain finality. Sahara AMC requested that the present proceedings may be postponed till the culmination of all the proceedings in the matter of SIRECL vis-a-vis SEBI before the Hon'ble Supreme Court.

7. On the scheduled date of personal hearing, Mr. Sudeep Seth, Advocate and Mr. Sudhir Kaup, Compliance Officer of Sahara MF appeared on behalf of all the noticees and reiterated the preliminary objection made vide its earlier letter dated February 04, 2015. Upon consideration, the preliminary objection of the noticees was rejected as the present proceedings are separate and independent from the issue under the consideration of Hon'ble Supreme Court and the present proceeding will not defeat the spirit/ content of the order of the Hon'ble Supreme Court dated August 31, 2012. Further to the rejection of the preliminary submission, the authorised representatives of the noticees made oral submissions on the merits of the case, while relying on the replies submitted before SEBI. The submissions of the noticees are summarised in brief, as under:
  - i. SEBI had granted certificate of registration dated October 01, 1996 to one First India Mutual Fund, under the provisions of the SEBI Act, 1992 (hereinafter referred to as 'SEBI Act') read with the MF Regulations. Later on, Sahara Sponsor had applied for registration of Sahara MF, under the MF Regulations and a 'certificate of registration' was granted to it. Thereby the existing mutual fund was taken over by Sahara Sponsor and consequently, the name of the same was changed to 'Sahara MF' on April 01, 2004. The Trustees of Sahara MF are Mr. S.R. Hegde, Mr. P.V. Rao, Mr. A.K. Thakur and Dr. P.P. Shastri, who had earlier held responsible positions in National/ State level organisations/ Indian Administrative Services. It has been said that these persons had discharged their duties to their utmost ability and have no pecuniary/ other interests, either in Sahara AMC or in Sahara sponsor, other than overseeing the conduct of the business of Sahara MF in an efficient manner, providing full protection to the interest of its investors.
  - ii. On December 12, 2014, Sahara Sponsor's Board of Directors comprised of Mr. Subrata Roy Sahara, Mr. O. P. Srivastava, Mr. Madhukar and Ms. Samreen Zaidi. Mr. Subrata Roy Sahara is a non Executive Director and is not in charge of the day to day affairs/ functions of Sahara

Sponsor. Mr. Subrata Roy Sahara had tendered his resignation from the post of Managing Worker and Chairman of Sahara Sponsor on September 02, 2014. On November 03, 2014, he has again been appointed as an Additional Director on the Board of Directors of Sahara Sponsor.

- iii. The board of Directors of Sahara AMC consists of persons namely Mr. Om Prakash Srivastava, Mr. Ramesh M. Joshi and Mr. S.C. Gupta. Mr. Subrata Roy Sahara was earlier a nominee director/ non Executive Director on the Board of Sahara AMC and had in no way influenced the working or affairs of Sahara AMC or Sahara MF which are independent legal entities. Mr. Subrata Roy Sahara had resigned from the Board of Directors of Sahara AMC on September 03, 2014.
- iv. The business of mutual fund was being carried on by the noticees since last 10 years, the noticees had never been charged by SEBI of flouting any of the conditions of registration as stipulated in Regulation 10, nor have they breached the Code of Conduct, general obligations and responsibilities. There is no charge that the integrity, reputation, character, competence and networth of Sahara Sponsor had been adversely affected or that there have been complaints or grievance of investors/ clients.
- v. There had been no violation of SEBI Regulations and none of the directors of the sponsor or AMC had been found guilty of any fraud any economic offence or of adversely affecting the interest of Sahara MF or its investors. Sahara Sponsor, Sahara AMC and Sahara MF are separate, distinct legal entities, being regulated by different set of statutory provisions i.e. Companies Act, MF Regulations, etc. and these have wrongly been dragged into the realm by linking the SEBI initiated case against SIRECL and SHICL (against which judicial proceedings are pending), which is still pending final disposal before the Hon'ble Supreme Court. SIRECL and SHICL neither held any share nor had any material interest or any investment in the Sahara AMC. Mere pendency of prosecution proceedings did not attract the penal consequences and as such there were no violation by the company. Further, no investments had been made by the AMC/ schemes of Sahara MF in SIRECL and SHICL.
- vi. The requirement of intimating SEBI about the adverse personal disqualification of the directors, as contemplated under the regulations is intended to make SEBI know about such personal disqualifications on the presumption, that unless such intimation is made by the concerned company, SEBI would be 'in dark' as such adverse order might be passed by courts of law or external authorities, where SEBI is not a party. In the present case, SEBI had the factual

information even before the noticees. The separate intimation of the said facts by the noticees would be a mere and idle formality.

- vii.** The SEBI order dated June 23, 2011, passed against SIRECL and SHICL was modified by Hon'ble Supreme Court vide order dated August 31, 2012, to the extent that the directions of restraint imposed by SEBI upon SIRECL, SHICL and Mr. Subrata Roy Sahara from associating with any listed public company and any public company intending to raise money from the public, has not been maintained and the said direction has been impliedly set aside.
- viii.** The observation that Mr. Subrata Roy Sahara is holding 80% of the shares in Sahara Sponsor and Sahara Sponsor hold more than 40% equity share capital in Sahara AMC, is an afterthought, as this position stood since the time, registration was granted by SEBI during 2003-2004. In the case of body corporate/ a firm, the reputation of its whole time director(s)/ managing partner(s) would come into focus. The reputation of the person who manages the body corporate is to be seen. The management of a company does not fall in the hands of a shareholder.
- ix.** Mere holding of directorship in Sahara Sponsor by Mr. Subrata Roy Sahara and linking that to his status, as a promoter of the two companies against which, judicial proceedings are still underway, cannot be valid justification for cancellation of registration of Sahara MF. No specific and valid ground/s have been stated on which the noticees have failed to exercise due diligence or comply with any specific obligation under the MF Regulations.
- x.** Sahara MF and the Trustees had made all the requisite disclosures and the terms and conditions of the registration under Regulation 10 of the MF Regulations were not flouted by Sahara Sponsor. As far as the aspect of pending litigation between SIRECL/ SHICL/ Mr. Subrata Roy Sahara with SEBI is concerned, the said information had always been in the knowledge of SEBI.
- xi.** SEBI had taken note of Sahara AMC submitting an application for renewal of certificate of registration as a Portfolio Manager in terms of the Portfolio Managers Regulations. In that capacity it had been providing all the requisite information by making disclosure to SEBI regarding the status of the litigation between SHICL/ SIRECL and SEBI in the PMS disclosure document filed by SEBI during the period of March 2012 to March 2014, the same were also uploaded on its website.
- xii.** When SEBI had realised that its freezing of all the bank account of Sahara Group wrongly included the bank and custody accounts of the schemes of the Mutual Fund also, the SEBI was gracious enough to defreeze the accounts of the Mutual Fund.

- xiii. Regulation 7 (aa) and 7A of the MF Regulations read with Schedule II of the Intermediaries Regulations providing the criteria for fit and proper person, are *ultra vires* to the Constitution of India as also the SEBI Act and the MF Regulations. The criteria for determining the 'fit and proper person' is too vague and uncertain. No parameters have been laid down for determining the integrity, reputation, character, competence including financial solvency and net worth. As the MF Regulations are disqualifying and also penal in nature, the criteria must be defined and certain. Further, the criteria of 'fit and proper person' has no nexus with terms and conditions of registration as well as business/ activities of Sahara MF. The same cannot, under the established principles of jurisprudence, be a ground for imposition of penalty involving personal rights and integrity of the concerned persons involved in it, as if they have committed an offence, involving *mens rea*.
- xiv. The noticees has submitted that the doctrine of 'piercing the corporate veil' is an exception to the principle that a company is a legal entity separate and distinct from the shareholders with its own legal rights and obligations. This doctrine can only be invoked by the courts of law, especially the Constitutional Court and not by a statutory authority like SEBI. It has been argued that DA has erroneously lifted the corporate veil of Sahara Sponsor to categorise it as *prima facie* not being 'a fit and proper person'.
- xv. Regulation 75 of the MF Regulations, provides for action against intermediaries by suspension or cancellation of registration in accordance with the procedure specified in Regulation applicable to such intermediary, however, neither such procedure has been prescribed under the Mutual Funds Regulations nor the said Regulations provide for being governed by Chapter V of the Intermediaries Regulation. Further, Sahara Sponsor cannot be included in the definition of the intermediary. The definition of intermediary under Regulation 2(g) of the Intermediaries Regulations excludes mutual funds, hence Intermediaries Regulations are not applicable to mutual funds and no action under Intermediaries Regulations can be resorted against Sahara Sponsor.
8. Before proceeding further, let me refer to the relevant provisions of the MF Regulations:

**“ MUTUAL FUND REGULATIONS**

***Eligibility criteria***

7. For the purpose of grant of a certificate of registration, the applicant has to fulfil the following, namely :—

- (a) ...  
(aa) the applicant is a fit and proper person;  
(b) ...

...

**Criteria for fit and proper person**

**7A.** For the purpose of determining whether an applicant or the mutual funds is fit and proper person the Board may take into account the criteria specified in schedule II of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008.

**Terms and conditions of registration**

**10.** The registration granted to a mutual fund under regulation 9, shall be subject to the following terms and conditions—

(a) the trustees, the sponsor, the asset management company and the custodian shall comply with the provisions of these regulations;

(b) the mutual fund shall forthwith inform the Board, if any information or particulars previously submitted to the Board was misleading or false in any material respect;

(c) the mutual fund shall forthwith inform the Board, of any material change in the information or particulars previously furnished, which have a bearing on the registration granted by it;

(d) payment of fees as specified in the regulations and the Second Schedule.

**Eligibility criteria for appointment of asset management company**

**21.** (1) ...

(a) ...

(aa) the asset management company is a fit and proper person;

(b) ...

...

**Terms and conditions to be complied with**

**22.** The approval granted under sub-regulation (2) of regulation 21 shall be subject to the following conditions, namely:—

(a) ...

(b) the asset management company shall forthwith inform the Board of any material change in the information or particulars previously furnished, which have a bearing on the approval granted by it;

(c) no appointment of a director of an asset management company shall be made without prior approval of the trustees;

(d) the asset management company undertakes to comply with these regulations;

(e) no change in the controlling interest of the asset management company shall be made unless,—

(i) prior approval of the trustees and the Board is obtained;

(ii) a written communication about the proposed change is sent to each unitholder and an advertisement is given in one English daily newspaper having nationwide circulation and in a newspaper published in the language of the region where the Head Office of the mutual fund is situated; and

(iii) the unitholders are given an option to exit on the prevailing Net Asset Value without any exit load;

(f) the asset management company shall furnish such information and documents to the trustees as and when required by the trustees.

**INTERMEDIARIES REGULATIONS**

**SCHEDULE II**

**Criteria for determining a 'fit and proper person'**

For the purpose of determining as to whether an applicant or the intermediary is a 'fit and proper person' the Board may take account of any consideration as it deems fit, including but not limited to the following criteria in relation to the applicant or the intermediary, the principal officer and the key management persons by whatever name called —

(a) integrity, reputation and character;

(b) absence of convictions and restraint orders;

(c) competence including financial solvency and networth.”

9. I have considered the SCN, report submitted by DA, reply to the SCN and the oral submissions made during the course of personal hearing and all other relevant material



available on record. The issue for determination in the instant matter is whether Sahara MF along with Sahara AMC & its Trustees and Sahara Sponsor satisfy the 'fit and proper person' criteria to carry out the business of a Mutual Fund?

**10. Whether Sahara MF along with Sahara AMC & its Trustees and Sahara Sponsor satisfy the 'fit and proper person' criteria to carry out the business of a Mutual Fund?**

- a. I note that SEBI vide its letter dated November 13, 2003, had granted approval to Sahara India Financial Corporation Limited to sponsor First India Mutual Fund. Thereby, an existing mutual fund was taken over by Sahara Sponsor and Sahara MF came into existence on April 01, 2004. I note that Sahara AMC and Sahara Sponsor are part of 'Sahara group'. I have seen the structure of Sahara Mutual Fund. The shareholders of Sahara AMC, as per the statement of additional information filed by Sahara AMC dated April 01, 2015, are as under :

**Table A**

Name of the Shareholder	Type of Holding	Holding (%)
Sahara India Financial Corporation Limited (Sahara Sponsor)	Equity	40.12
Sahara India Corp Investment Limited	Equity	9.99
Sahara Prime City Ltd. (formerly Sahara India Investment Corp. Ltd.)	Equity	9.99
Sahara Care Limited	Equity	27.89
Sahara India Commercial Corporation Ltd.	Preference	10.84
Sahara Care Ltd	Preference	1.16
<b>Total</b>		<b>100%</b>

As the above table shows both equity and preference shareholding, the following table presents only the equity shareholding pattern of Sahara AMC :

**Table A1**

S. No.	Name of Shareholder	Type of Shares	% of total equity share capital
1	Sahara Sponsor	Equity	46
2	Sahara India Corp Investment Limited	Equity	11
3	Sahara Prime City Limited	Equity	11
4	Sahara Care limited	Equity	32
<b>Total</b>			<b>100%</b>

Further, the following were the Directors of Sahara AMC:

- i. Mr. Om Prakash Srivastava, Associate Director,
- ii. Mr. Subrata Roy Sahara, Associate Director,
- iii. Mr. Ramesh M. Joshi, Independent Director,
- iv. Mr. Subhah Chander Gupta, Independent Director

- v. Mr. Chandrakant Kamdar, Independent Director.

The noticees have submitted that Mr. Subrata Roy Sahara had resigned from the Board of Directors of Sahara AMC on September 03, 2014.

- b. It is also relevant to note the shareholding pattern of Sahara Sponsor who as noted above is one of the major shareholders of Sahara AMC and holds 40.12% shareholding. The shareholding details of Sahara Sponsor as on February 28, 2014 was:

**Table B**

<b>S.No.</b>	<b>Name of Shareholder</b>	<b>% Equity Holding</b>
1.	Mr. Subrata Roy Sahara	79.80
2.	Ms. Swapna Roy	8.72
3.	Mr. O.P. Srivastava	5.61
4.	Mr. Joy Broto Roy	5.61
5.	Mr. Ishtiaque Ahmad	0.02
6.	Mr. D.K. Srivastava	0.02
7.	Mr. S.K. Singh	0.02
8.	Mr. Abdul Dabeer	0.02
9.	Mr. Zia Qadri	0.02
10.	Mr. Vivek Sahai	0.02
11.	Mr. Tridip Narain Roy	0.02
12.	Mr. A.K. Srivastava	0.02
13.	Mr. Ashok Roy Chaudhary	0.02
14.	Mr. Jarnal Ahmad Khan	0.02
15.	Mr. S.K. Sharma	0.02
16.	Mr. K.K. Sarkar	0.02

**Table B1**

<b>S.No.</b>	<b>Name</b>	<b>% Preference Holding</b>
1.	Mr. Subrata Roy Sahara	53.34
2.	Mr. O P Srivastava	23.33
3.	Mr. Joy Broto Roy	23.33

As seen from the above and also noted from the Report of the DA, Mr. Subrata Roy Sahara is the single largest shareholder (holding almost 80% of the total share capital) of Sahara Sponsor. Considering the shareholding of Mr. Subrata Roy Sahara, it can be said that he holds a responsible position in Sahara Sponsor and that he is also capable of exercising control and influence over the management and appoint majority of the directors on the board of the said Company. Briefly said, Mr. Subrata Roy Sahara enjoys the controlling interest and represents

the directing mind and will of Sahara Sponsor. Therefore, I agree with the findings of DA that Sahara Sponsor is nothing but an 'alter ego' of Mr. Subrata Roy Sahara. Additionally, all other shareholders of Sahara AMC are group companies of 'Sahara' only.

- c. SEBI vide its order dated June 23, 2011, had issued certain directions against SIRECL and SHICL in independent proceeding and it *inter alia* directed Mr. Subrata Roy Sahara (who was also the director of Sahara AMC and Sahara Sponsor, at the relevant point of time) to refund the money collected to the subscribers of 'Optionally Fully Convertible Debentures'. Mr. Subrata Roy Sahara was also restrained from associating with any listed public company and any public company which intends to raise money from the public, till said payments are made to the satisfaction of SEBI. I note that SIRECL and SHICL had preferred an appeal before the Hon'ble SAT against the order of SEBI. Hon'ble SAT upon consideration vide order dated October 18, 2011, upheld the order of SEBI. Aggrieved by this, appeals were filed before the Hon'ble Supreme Court of India. Hon'ble Supreme Court of India vide its order dated August 31, 2012, upheld the order of SEBI and Hon'ble SAT.

In addition to the above, I also note that the following actions/ proceedings are also there against Mr. Subrata Roy Sahara and the companies with whom he is associated (hereinafter referred to as 'Companies of the Sahara group'), i.e.:

- i. The Hon'ble Supreme Court of India vide Order dated August 31, 2012 and December 05, 2013, had *inter alia* directed SIRECL and SHICL to refund to SEBI the amount collected through Red Herring Prospectus dated March 13, 2008 and October 16, 2009, alongwith an interest @ 15% per annum from the date of receipt of the subscription amount till the date of repayment within three months from the date of that Order.
- ii. Vide Order dated August 31, 2012, Hon'ble Supreme Court had directed that if SIRECL and SHICL fail to comply with the directions and do not effect refund of money as per directions, SEBI can take recourse to all legal remedies, including attachment and sale of properties, freezing of bank accounts, etc. for realizing such amounts.
- iii. Vide Order dated February 13, 2013, SEBI, directed freezing of all the bank accounts/ demat accounts of Mr. Ashok Roy Choudhary, Mr. Ravi Shanker Dubey, Ms. Vandana Bhargava and Mr. Subrata Roy Sahara. Further, it was directed to attach all movable and immovable properties standing in the names of the aforesaid persons.

- iv. The Hon'ble Supreme Court of India vide order dated November 21, 2013, held that Sahara Group of Companies shall not part with any movable or immovable properties until further orders.
  - v. The Hon'ble Supreme Court of India vide order dated March 04, 2014, *inter alia* ordered detention of Mr. Subrata Roy Sahara and sent him to judicial custody, which is still continuing.
  - vi. In addition, two criminal complaints under Section 24(1) read with Section 27 of the SEBI Act, were filed by SEBI against SHICL and its 4 Directors/ Promoters (including Mr. Subrata Roy Sahara); and against SIRECL and its 4 Directors/Promoters (including Mr. Subrata Roy Sahara), for the violation of the various provisions of SEBI (DIP) Guidelines, 2000 and SEBI (ICDR) Regulations, 2009 and for the violation of various provisions of the Companies Act, 1956. The aforesaid matters are still pending.
  - vii. SEBI has also initiated adjudication proceedings under the SEBI Act, against SIRECL, SHICL, its Promoter namely Mr. Subrata Roy Sahara and its Directors namely Mr. Ashok Roy Choudhary, Mr. Ravi Shanker Dubey and Ms. Vandana Bhargava.
- d. Mr. Subrata Roy Sahara was the Director of Sahara AMC till September 03, 2014. Although Mr. Subrata Roy Sahara had admittedly resigned from the post of Managing Worker and Chairman of Sahara Sponsor on September 02, 2014, I note that he was later appointed as an Additional Director on the Board of Directors of Sahara Sponsor on November 03, 2014. It is seen that the resignations of Mr. Subrata Roy Sahara from the boards of Sahara AMC and Sahara Sponsor were mainly after the order dated March 04, 2014 of the Hon'ble Supreme Court of India and the show cause notice dated August 12, 2014 from the DA. Considering the above, I agree with the findings of DA that till the initiation of the present proceedings, Mr. Subrata Roy Sahara was on the board of Sahara AMC and Sahara Sponsor. It is noted that Mr. Subrata Roy Sahara was appointed as an additional director in Sahara Sponsor. Further, even after the resignation of Mr. Subrata Roy Sahara from the board of Sahara AMC and Sahara Sponsor, Mr. Subrata Roy Sahara holds about 80% of the shareholding of Sahara Sponsor (Table B) and is in a position to influence the working and affairs of it. It is also noted that Mr. Subrata Roy Sahara was again appointed as an Additional Director on the Board of Directors of Sahara Sponsor. Further, Sahara Sponsor holds around 46% equity capital in the Sahara AMC as detailed in Table A1 above.

e. As discussed in the previous paragraphs, the Hon'ble Supreme Court of India had vide its order dated March 04, 2014, *inter alia* ordered detention of Mr. Subrata Roy Sahara and he was sent to judicial custody for the non-compliance of the earlier order of Hon'ble Court dated August 31, 2012 and other orders regarding the refund of the amount along with the interest. The Hon'ble Supreme Court of India in its order had also stated as under:

*"... ... Preservation of market integrity is extremely important for economic growth of this country and for national interest. Maintaining investors' confidence requires market integrity and control of market abuse. Market abuse is a serious financial crime which undermines the very financial structure of this country and ..."*

f. The noticees have argued that the position in respect of the shareholding of Mr. Subrata Roy Sahara stood since the time, registration was granted by SEBI during 2003-2004. In my view, the noticees cannot take the same as a defence. Rather, it is seen that Mr. Subrata Roy Sahara has held such position in AMC/ Sponsor, which enabled him to exercise 'control' within the meaning of its definition at Regulation 2(g) of the MF Regulations. It states in clear terms that control means "*in the case of a company any person or combination of persons who directly or indirectly own, control or hold shares carrying not less than 10% of the voting rights of such company;...*".

g. Further, the argument that the reputation of the person who manages the body corporate has to be seen and the management of a company does not fall in the hands of a shareholder, cannot be said to be always correct. It is always possible for the major shareholders to control the management with the help of their shareholding/ by exercising the majority voting rights. Further, the provisions of 'fit and proper person' is applicable to all the intermediaries in the securities market and with respect to a body corporate, it shall be applicable to the persons who hold responsible positions in the body corporate and to those who are in a position to influence the decision making process. In view of this, the proceedings/ actions as discussed in **para c** become all the more relevant to consider the 'fit and proper' status of the noticees.

h. Therefore, to determine whether the noticees are 'fit and proper person' in terms of the criteria as contained in Schedule II of the Intermediaries Regulations, the role of Mr. Subrata Roy Sahara is required to be considered. A reading of the criteria for determining a 'fit and proper person' as provided under Schedule II of the Intermediaries Regulations, makes it amply clear that in order to determine whether an intermediary is a 'fit and proper person', SEBI, can take into account any consideration as it deems fit, including the integrity, reputation and character; convictions and restraint orders; competence including financial solvency and networth in

relation to the intermediary, the principal officer and the key management persons. Thus, the same covers the persons who are in a position to influence the decision making process. For the purposes of performing the test of 'fit and proper person' on a body corporate, it is necessary to apply the criteria on such body corporate and extend the same to the persons who hold responsible positions and are in a position to influence the decision making process in the Company. In this regard, I place reliance upon the order of Hon'ble SAT dated September 06, 2006, in the matter of *Jermyn Capital LLC Vs. SEBI* (Appeal No. 21/2006), wherein it was observed that:

*“... Good reputation and character of the applicant is a very material consideration which must necessarily weigh in the mind of the Board in this regard. Reputation is what others perceive of you. In other words, it is the subjective opinion or impression of others about a person and that, according to the Regulations, has to be good. This impression or opinion is generally formed on the basis of the association he has with others and/or on the basis of his past conduct. A person is known by the company he keeps. In the very nature of things, there cannot be any direct evidence in regard to the reputation of a person whether he be an individual or a body corporate. In the case of a body corporate or a firm, the reputation of its whole time director(s) or managing partner(s) would come into focus. The Board as a regulator has been assigned a statutory duty to protect the integrity of the securities market and also interest of investors in securities apart from promoting the development of and regulating the market by such measures as it may think fit. It is in the discharge of this statutory obligation that the Board has framed the Regulations with a view to keep the market place safe for the investors to invest by keeping the undesirable elements out. ...”*

Having considered the above, it becomes imperative to consider the past record of the intermediary/ the applicant and the associate entities. I am of the view that SEBI with an objective to maintain a fair and transparent securities market to invest, by keeping the undesirable elements away may take into consideration the factors of adverse track record, initiation of proceedings and atmosphere of mistrust against the entity concerned while applying the test of 'fit and proper person'. I note that the intermediaries registered with SEBI have to fulfill the criteria of 'fit and proper person' at the time of registration and the same criteria should continuously be satisfied throughout the period of the validity of their registration/ the period they are associated with the securities market.

- i. Regulation 7(aa) read with Regulation 10 of the MF Regulations requires that the applicant for mutual fund should be a 'fit and proper person'. In terms of Regulation 21(aa) read with Regulation 22 of the MF Regulations, the AMC is required to be a 'fit and proper person' to carry out the functions for the Mutual Fund. I note this a continuous requirement. Thus, considering the SEBI order dated June 23, 2011, the pending contempt proceedings against Mr. Subrata Roy Sahara, SHICL/ SIRECL (group companies of 'Sahara') and other litigations

initiated and pending against Mr. Subrata Roy Sahara, Sahara MF along with the Sahara AMC and Sahara Sponsor are no longer *fit and proper persons* to carry out the business of a Mutual Fund.

- j. Let me now refer to the other regulations alleged to have been violated by the noticees. As per Regulation 25(12)(a) of the MF Regulations, the Asset Management Company (AMC) has to file detailed bio-data of all its directors along with their interest in other companies within fifteen days of their appointment. SEBI has vide Circular dated December 20, 2001 and August 29, 2002, laid down the format for the bio-data that is to be filed with SEBI within 15 days of the appointment of a director on the AMC Board [as per Regulation 25(12) (a)]. As per the format, a declaration is taken from the appointed director that regarding the information contained within para VI (Relationship with Sponsor) and para VII (Record of Regulatory Violations/ Criminal offence), SEBI would be informed immediately on changes. Further, as per 'point 4' of para VII [Record of Regulatory Violations/ Criminal Offence (if any)], the applicant is required to confirm if he has ever been associated with any organization as a director or an employee against which SEBI had initiated action of suspension or cancellation of certificate of registration or initiated action under Section 11(B) of the SEBI Act or any prosecution launched for acts committed during their association

The SEBI Circular dated December 20, 2001, provides the format of such bio-data in which at 'para 6', it is provided that 'SEBI would immediately be informed on any changes pertaining to Para VI and VII in the bio-data and other requirements as specified in Regulations'. Para VI and VII are having the heading: 'Relationship with Sponsor or AMC' and 'Record of Regulatory Violations/ Criminal Offence (if any)' in the format of bio-data, the same require the director to confirm if such person:

- ... ever been found guilty by any court/ regulatory body/ self-regulatory organisation/ stock exchange for any offence related to securities market in India or abroad?
- ... ever been associated with any Organisation as a director or an employee against which SEBI had initiated action of suspension or cancellation of certificate of registration or initiated action under Section 11(B) of SEBI Act or any prosecution launched for acts committed during such association?

It is an admitted position that Sahara AMC has not filed the details regarding the directions issued by SEBI vide its order dated June 23, 2011, as against Mr. Subrata Roy Sahara in the prescribed bio-data to SEBI. I note that Mr. Subrata Roy Sahara has continuously failed to provide the required information as per the MF Regulations since June 23, 2011.

- k. The noticees in the respective replies have argued that they have been wrongly dragged in the proceedings against SIRECL and SHICL, which is still pending final disposal before the Hon'ble Supreme Court. It has also been said that mere pendency of prosecution proceedings did not attract the penal consequences and as such there were no violation by Sahara AMC. Further, the noticees are independent legal entities, different from SIRECL and SHICL (against which judicial proceedings are pending) and no order has been passed by any competent Court of Law, indicating any of the directors of Sahara Sponsor, guilty of fraud or any economic offence or of any offence involving moral turpitude or of any offence adversely affecting the interest of the Mutual Fund or its investors. It has been argued that unless such adverse order is finally passed by a competent Court of Law, the question of reporting such grave facts does not arise. It has also been said that even if, any prosecution is initiated, mere pendency of such proceedings does not attract the said provision, until final order is passed by a competent court of law.

I have considered the above argument of the noticees. However, the submissions are unacceptable in view of the mandatory requirements of the MF Regulations and the SEBI Circulars referred above. From a reading of the relevant provision of the 'bio-data', it is clear that Sahara AMC on receipt of the information regarding the directions dated June 23, 2011, was immediately required to inform the same to SEBI, in the prescribed format under the heading 'Record of Regulatory Violations/ Criminal Offence' (as detailed above). And, there was no exception to the requirement as discussed. Therefore, I find that Sahara AMC has clearly failed to comply with this requirement. SEBI has the duty to keep the markets fair and free from undesirable elements. The requirement of the bio-data is nothing but a disclosure by the AMC. Further, the clause 4 of Para VII of the bio-data clearly states about the actions initiated by SEBI. By not providing such details in the prescribed format, Sahara AMC, in my view has violated the provisions of Regulation 22 of the MF Regulations, which requires the AMC to inform SEBI of any material change in the information or particulars, which have a bearing on the approval granted by it.

1. Further, the noticees have also violated the provisions of Regulation 10 of the MF Regulations which provides the 'terms and conditions of registration' granted to mutual fund. Regulation 10 of the MF Regulations states that the trustees, the sponsor, the AMC and the custodian shall comply with the provisions of the MF Regulations. Clause 'c' of the Regulation 10 of the MF



Regulations requires/ binds the mutual fund to inform SEBI, of any material change in the information or particulars previously furnished, which have a bearing on the registration granted to it.

- m. Upon consideration of the above actions subsisting against Mr. Subrata Roy Sahara and the group companies of Sahara, it can be concluded that Sahara AMC is not 'a fit and proper person' in accordance with the MF Regulations. Non reporting of the material change in the information/ particulars furnished also has resulted in violation of the Regulation 22 of the MF Regulations. In view of the same, I am unable to accept the submissions of the noticees that the ensuing litigation did not have a bearing on the approval granted by SEBI/ no adverse impact upon the business of Mutual Fund and there was no material change for being informed to SEBI to have a bearing on the registration granted.
- n. The noticees have argued that Hon'ble Supreme Court vide its order dated August 31, 2012, had modified the order of SEBI, to the extent that the directions of restraint imposed by SEBI upon SIRECL, SHICL and Mr. Subrata Roy Sahara from associating with any listed public company and any public company intending to raise money from the public, has not been maintained and the said direction has been impliedly set aside. This submission appears to be incorrect as Hon'ble Supreme Court vide its order dated August 31, 2012, had upheld the order of SEBI dated June 23, 2011 and the order of Hon'ble SAT. The modification as indicated by the noticees is only with respect to the process of refund of amounts. In view of the same, I find no merits in the argument of the noticees.
11. The noticees have also argued that the criteria for determining the 'fit and proper person' is too vague and uncertain. Further, it has also been said that the MF Regulations are disqualifying and penal in nature, the criteria is required to be defined and not certain. In this regard, I once again refer to the order of Hon'ble SAT dated September 06, 2006, in the matter of *Jermyn Capital LLC Vs. SEBI* (Appeal No. 21/2006), wherein it was observed that:

*"... A reading of the aforesaid provisions of the Regulations makes it abundantly clear that the concept of a fit and proper person has a very wide amplitude as the name "fit and proper person" itself suggests. The Board can take into account "any consideration as it deems fit" for the purpose of determining whether an applicant or an intermediary seeking registration is a fit and proper person or not. The framers of the Regulations have consciously given such wide powers because of their concern to keep the market clean and free from undesirable elements. It can take into account the financial integrity of the applicant and its competence. Absence of convictions or civil liabilities would be another relevant consideration which could weigh with the Board. ..."* [Emphasis supplied]

12. In view of the above, it is clear that the criteria for determining the 'fit and proper person' is not vague and uncertain but of wide amplitude. Therefore, I find no merit in the submission of the noticees that no parameters have been laid down for determining the integrity, reputation, character, competence including financial solvency and net worth.

Mutual Fund is a platform of trust and the persons who have been held guilty of violation of the provisions of the SEBI Act or the rules and regulations made thereunder, are required to be kept away, in order to avoid any possible loss to lay investors. In view of the same, the argument of the noticees that Regulation 7(aa) and 7A of the MF Regulations read with Schedule II of the Intermediaries Regulations providing the criteria for 'fit and proper person', are *ultra vires* to the Constitution of India as also the SEBI Act and the MF Regulations is of no merit.

13. Another argument of the noticees is that the doctrine of 'piercing the corporate veil' is an exception to the principle that a company is a legal entity separate and distinct from the shareholders with its own legal rights and obligations. They also submitted that this doctrine can only be invoked by the courts of law, especially the Constitutional Court and not by a statutory authority like SEBI. In support of this argument, the noticees have relied upon the order of Hon'ble Supreme Court in the matter of *Balwant Raj Saluja Vs. Air India Limited*<sup>1</sup>. However, the facts of the present case are different and the context of the Order is not relevant to the issue at hand. In this regard, I place my reliance on the order of Hon'ble Supreme Court (Larger Bench) in the matter of *LIC Vs. Escorts Limited*<sup>2</sup>, wherein while discussing the doctrine of corporate veil, had observed that:

*“90. ... the corporate veil may be lifted where a statute itself contemplates lifting the veil, or fraud or improper conduct is intended to be prevented, or a taxing statute or a beneficent statute is sought to be evaded or where associated companies are inextricably connected as to be, in reality, part of one concern. It is neither necessary nor desirable to enumerate the classes of cases where lifting the veil is permissible, since that must necessarily depend on the relevant statutory or other provisions, the object sought to be achieved, the impugned conduct, the involvement of the element of the public interest, the effect on parties who may be affected, etc.”*

I also note that the object of SEBI Act is to protect the interest of the investors in securities and to promote the development of, and to regulate, the securities market and for matters

---

<sup>1</sup> 2014 (9) SCC 407

<sup>2</sup> 1986 AIR 1370

connected therewith or incidental thereto. For achieving the same, SEBI in the normal course of its working requires the intermediaries/ companies associated with the securities market to provide the details of the promoters/ directors. In view of the same, it will not be correct to accept the argument of the noticees that DA has erroneously 'lifted the corporate veil' of Sahara Sponsor to categories it as *prima facie* not being 'a fit and proper person'.

14. The noticees have also submitted that Regulation 75 of the MF Regulations provides for action against intermediaries in accordance with the procedure specified in regulation applicable to such intermediary. However, neither any such procedure has been prescribed under the MF Regulations nor the Regulations have provided for being governed by Chapter V of the Intermediaries Regulations. The noticees have also contended that Sahara Sponsor cannot be included in the definition of intermediary and the definition of 'intermediary' under Regulation 2(g) of the Intermediaries Regulations excluded Mutual Funds and hence Intermediaries Regulations are not applicable to the Mutual Funds and no action under Intermediaries Regulations can be resorted against Sahara Sponsor.

I have considered the submissions of the noticees. The SCN and the Report of DA does not state that Sahara Sponsor is an intermediary and is regulated by the Intermediaries Regulations. The main allegation in the SCN is that Sahara AMC being controlled by a person who is not 'fit and proper', is also not a 'fit and proper person'. Further, I also note that the provisions of Chapter I of the Intermediaries Regulations of which Regulation 2(g) is a part, is yet to come into force.

I now refer to Regulation 75 of the MF Regulations, the same has been reproduced herein below:

***"Action against intermediaries***

*75. The Board may initiate action for suspension or cancellation of registration of an intermediary holding a certificate of registration under section 12 of the Act who fails to exercise due diligence or to comply with the obligations under these regulations:*

*Provided that no such certificate of registration shall be suspended or cancelled unless the procedure specified in regulations applicable to such intermediary is complied with."*

I note that SEBI grants the certificate of registration to the Mutual Fund itself and violation by such entity will mandate action against such registered entity. Regulation 23 of the Intermediaries Regulations, provides that if a person who is granted a certificate of registration

breaches the conditions of registration or the securities laws, action in the manner provided under the Intermediaries Regulations shall be taken:

***"Cancellation or suspension of registration and other actions.***

*23. Where any person who has been granted a certificate of registration under the Act or regulations made thereunder, –*

*(a) fails to comply with any conditions subject to which a certificate of registration has been granted to him;*

*(b) contravenes any of the provisions of the securities laws or directions, instructions or circulars issued thereunder;*

*the Board may, without prejudice to any action under the securities laws or directions, instructions or circulars issued thereunder, by order take such action in the manner provided under these regulations".*

15. Reference may also be given to Regulation 68 of the MF Regulations which provide that a mutual fund shall be dealt with in the manner provided under Chapter V of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008 for the violation of the conditions of the registration also. As per the definition of a mutual fund, a *"mutual fund"* means a fund established in the form of a trust to raise monies through the sale of units to the public or a section of the public under one or more schemes for investing in securities including money market instruments or gold or gold related instruments or real estate assets. I note that the sponsor establishes the fund and the trustees oversee the functioning of the mutual fund and ensure that the interests of the investors are not prejudiced. The AMC manages the mutual fund and operate the schemes of such mutual fund. Therefore, these entities/ persons are responsible for the affairs, conduct and operations of a mutual fund. Considering the connection between Sahara Sponsor and Sahara AMC, as brought out above, it becomes all the more necessary to consider their role in the proceeding that concerns the registration granted to the Mutual Fund. In view of the above, I see no merits in the contention made by the noticees. I note that as per the requirements of Regulation 7 and Regulation 21 of the MF Regulations, a sponsor and an AMC respectively always have to comply with the 'fit and proper person' criteria. Having held Sahara India Financial Corporation Limited (*Sahara Sponsor*) and Sahara Asset Management Company Private Limited (*Sahara AMC*) are not 'fit and proper persons'. I find that they have failed to fulfill the eligibility criteria to remain as the Sponsor and Asset Management Company respectively.
16. In view of the foregoing, I agree with the observation made by the DA that Sahara MF along with Sahara AMC and Sahara Sponsor are no longer 'fit and proper' persons to carry out the business of Mutual Fund. Further, it was the responsibility of the Board of Trustees to

recognise that Sahara AMC did not fulfill the criteria of 'fit and proper' person and shift the responsibility of managing the assets of the Mutual Fund to another entity. In my view, having failed to perform their duty, the Trustees of Sahara MF also cannot be allowed to remain in their trustee position on an on-going basis.

Accordingly, I am inclined to agree with the recommendation of the DA that the certificate of registration of Sahara MF be cancelled. Cancellation of registration of a mutual fund would therefore restrain the mutual fund from the activity of raising funds through sale of units to the public. However, I note that immediate cancellation of registration will not be in the interest of investors who have subscribed to the units of Sahara MF and such action may have a bearing on the existing investments of the investors in the schemes. In view of the same, it is necessary that the interest of the investors who have folios with Sahara MF are taken care of while issuing directions in the present matter.

17. Having regard to the above, I in exercise of the powers conferred upon me in terms of Section 19 of the Securities and Exchange Board of India Act, 1992 read with Regulation 28(2) of Securities and Exchange Board of India (Intermediaries) Regulations, 2008, hereby order cancellation of the Certificate of Registration of the Sahara Mutual Fund. However, keeping the interests of unit holders, I hereby direct that the Order of cancellation of the Certificate of Registration of the Sahara Mutual Fund shall be effective on expiry of **six (6) months** from the date of this order. In the meantime, **pending cancellation of the certificate of registration** of the Sahara Mutual Fund, I order that:
  - i. Sahara Mutual Fund/ Sahara Asset Management Company Private Limited (*Sahara AMC*) shall not take any new subscription from the investors (including existing investors in Systematic Investment Plans (SIP)/ Systematic Transfer Plans (STP)). Further, the Sahara Mutual Fund shall not levy any penalties/ loads on the SIP/ STP investors for not depositing the installments.
  - ii. Sahara Mutual Fund shall make efforts to transfer the activities of Sahara India Financial Corporation Limited (*Sahara Sponsor*) and Sahara Asset Management Company Private Limited (*Sahara AMC*) to a new Sponsor and a SEBI approved Asset Management Company at the earliest.

- iii. The Board of Trustees of the Sahara Mutual Fund shall oversee and ensure protection of the unitholders' interests during the above period. On transfer of the activities as mentioned at para 17(ii) above, the Board of Trustees shall be re-constituted in accordance with the SEBI (Mutual Fund) Regulations, 1996.
- iv. In the event of failure of Sahara Mutual Fund to complete the process of transition as mentioned at para 17(ii) above, within a period of **five (5) months from the date of this order**, then Sahara Mutual Fund should compulsorily redeem the units allotted to its investors and credit the respective funds to its investors, without any additional cost, within a period of **thirty (30) days** thereafter and wind up the operations of the Mutual Fund.
- v. On expiry of the **six (6) months** from the date of this order, Sahara Mutual Fund shall return the certificate of registration to SEBI.

**DATE: July 28<sup>th</sup>, 2015**  
**PLACE: Mumbai**

**PRASHANT SARAN**  
**WHOLE TIME MEMBER**  
**SECURITIES AND EXCHANGE BOARD OF INDIA**