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## Sahara v SEBI

### Facts

- In 2008 RBI imposed a ban on Sahara India Financials Corporation in order to prevent it from raising additional deposits .
- As the growth of the Sahara business had always been mysterious and suspicious, it operated a Ponzi scheme.
- With the Reserve Bank of India (RBI) prohibiting the collection of deposits from the public, the conglomerate sought an alternative financial mechanism to continue its operations.
- This led Sahara to seek a financial instrument that could circumvent the RBI's oversight while still enabling access to funds from the public.
- Sahara opted to issue Optionally Fully Convertible Debentures (OFCDs) through the establishment of two entities: Sahara India Real Estate Corporation (SIREC) and Sahara Housing Investment Corporation (SHIC). Approval from the Registrar of Companies (ROC) was necessary for these investment vehicles to be established and operate legally.

### Issue

- Whether this case is under the jurisdiction of SEBI to handle this case under Sec 11,11A,11B of SEBI Act and Sec 55A of company Act or fall under MCA
- Whether issuing OFCDs to a substantial number of subscribers constitutes a private placement, thereby exempting it from the regulatory scrutiny of SEBI and certain provisions of the Companies Act.?
- Whether the requirements stipulated in Section 73, which relate to listing obligations, are obligatory for all public issues, or if their applicability hinges on the company's "intent" to pursue a listing on the stock exchange?
- Whether public unlisted Company 2003 apply in this case and have relevance to the Issuance of OFDC?
- Whether OFCDs should be classified as convertible bonds and whether they are exempted from the application of the Securities Contracts (Regulation) Act (SCRA) under the provisions of Sec 28(1)(b)?

### Argument by petitioner

- Petitioners argue that according to the Sec55A of Company Act 1956 SEBI jurisdiction is limited for seeking investigation of Companies listed on stock market since Companies application is still pending .
- Petitioner also argued that listings not required as in Sec73 of Companies Act apply to only those Companies who have intended to get listed.
- Petitioner further argued that if a company files Draft Red Herring Prospectus with registrar office as Sec60B then they can directly collect funds from the public and SEBI have no right for jurisdiction.
- The petitioner argued that Unlisted Public Companies (Preferential Allotment) Rules 2003 permitted unlisted public companies to make preferential allotments through private placement without any limit on the number of allottees, as stated in Section 67(3) of the Companies Act.
- The petitioner stressed that these rules were amended in 2011 with prospective effect, not retroactive, thereby granting the freedom to conduct preferential allotments to more than 50 persons before the implementation of the 2011 Rules.

### Argument by Respondent

- Respondents emphasized the role of SEBI as a regulatory authority over Companies making public offers.
- The respondent argued that OFCD issue by two Companies should be classified as security and within the definition provided by Company Act, SEBI Act and SCRA and the inclusion of the term "debenture" in the name of the instrument suggested that it should be regarded as a security according to the relevant provisions.
- The respondent invoked Section 67(3) of the Companies Act, which stipulates that when any security is offered to and subscribed by more than 50 persons, it will be deemed to be a public offer. Consequently, SEBI would have jurisdiction in such cases and the issuer would be obligated to comply with the various provisions of the legal framework for a public issue.

### Judgment

- SC order to Sahara to refund the entire amount of deposits that had been collected along with Interest rate 15 percent apply until the date.
- The Supreme Court not only affirmed SEBI's jurisdiction but also strengthened it by providing the regulator with the necessary legal mechanisms to enforce the refund order
- The Court issued a non-bailable warrant for the arrest of Sahara India Pariwar Chairman and other members who failed to comply with the refund order.