



CASE ANALYSIS ON SEBI VS SAHARA

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PART A

Facts of the Case : -

Sahara Pariwar which is an conglomerate flouted two companies named (Sahara India Real Estate Corporation Limited (SIRECL) and Sahara Housing Investment Corporation (SHIC) which wanted to raise funds for their companies by the way of resolution passed by the companies started to raise funds by the way of issuing OFCD's (Optionally Fully Convertible Debentures) in the way of private placement amongst the people and members and employees of the company and was not a public issue which was not in compliance with SEBI (Securities exchange Board of India) since the securities issued were being Hybrid securities and came within the purview of SEBI.

OFCD if issued by the unlisted companies should have a maximum of 50 investors and the issue should get over in 10 days , but in this case the issue went up to 2 years with around 2.3 Crore investors.

The Sahara India Real Estate Corporation Limited (SIRECL) one of the said companies went on to issue a red herring prospectus for Sahara Prime City Ltd for further raising off fund and at the same time there was a complaint registered with SEBI on the basis of investments being collected by Sahara, which were seen to not have been in compliance with SEBI , RBI and Companies Act provisions.

Ratio of the Case

This Case removes on the Jurisdiction and the Regulatory power off SEBI to integer in the type of security a conman issues and the investor protection which is guaranteed. The Ratio mainly involves a one man report or order by the SEBI to refund the investors. To which the Sahara Group appealed to the SAT Tribunal with regards to SEBI not having Jurisdiction in this case, resulting in an order favouring Sahara to which when an appeal went to the Supreme Court with regards to this order the Supreme Court upheld SEBI orders. And there was a consenting Judgements in the Supreme Court towards this order. At the End the Supreme Court established that SEBI as absolute Jurisdiction

Analysis on establishing the Case a Corporate Offence.

Corporate Offences are the offences which are committed by corporations at large and there is a liability being imposed on the corporations for the various offences committed by them .This case involves two major Parts which comes in place for establishing the case as a corporate offence case , theses principles are The Lifting of corporate veil and another is the corporate Social Responsibility and investor Protection.

In this case there is an corporate is involved instead of a person and the way to differentiate it from a white collar crime is to see the role of the directors and chairman of both the companies an well as the director of the promoter company being involved are being held liable . Which proves the fact that there is a corporate which is the Sahara Group and it s companies being involved and meets the requirements of corporate offence and the application of the lifting of Corporate Veil.



The Corporate is being held liable instead of an individual person which is done in the case of white collar crimes where the crime is committed by the person for the benefit of himself by using company as a shield which is not the case here. In this case we can see a resolution being passed by the board to raise funds by a way of private placement which the private and unlisted companies can do but upto 50 investors and the issue should be valid for ten days but in this case the issue went up to two years and had an investor base of 3 crore along with investments of 24000 crore so even though this is a financial fraud and there is an involvement of more than one person in a form of company and trying to shield away the liability they cannot because We can see in this case that along with the Chairman / Managing Directors of both the companies being held liable the Chairman of the promoting Company Sahara is also being held liable by the way of which we can see the actual involvement of the corporate also been held liable.

The directors could not escape liability along with the promoter of both the companies showing the there is the Criminal Liability being imposed on the directors for the fraud committed during the tenure on behalf of the company.

Along with this we can see that the both the companies were registered near the Register of Companies and they were both unlisted companies but tried to use the companies name to raise funds in the name of the the companies by a way of special resolution to the tune of 24,000 Crore. This one act shows that there is a clear explanation of how the Companies belonged to the Sahara Pariwar and its Managing worker tried to betray the investors, without any investment Protection

and on the basis of SEBI rules the Sahara group did not have the permission to raise investments upto 24,000 Crore since if there is a private placement issue it should get over within 5 days.

Lifting of the corporate veil in this cases occurs in the way of holding the promoter company chairman Mr Subrata Roy liable along with his directors of both the subsidiary companies which had raised investments around 24,000 crore. By lifting the Corporate veil the promotor company and the subsidiary company was being held liable and the Supreme Court had taken a leading role in the lifting of the corporate veil.

Along with this principle the corporates should follow the principle of corporate social responsibility which was not there in the Sahara case since there was no protection of the investors and their investments which was invested in the company. Sahara had no detail of the 24,000 crore investments that was received from about 3 crore investors and had a relevant less data, by all this we can see that the Sahara being a corporate had no responsibility towards its investors.

Jurisdiction and Dominant principles of corporate Liability

The Jurisdiction of this case lies in India. Since all the investors in both these companies were from India, the Jurisdiction is in India. The SEBI (Securities Exchange Board India) as the absolute jurisdiction in this case along with the SAT (Securities Appellate Tribunal) and the Supreme Court of India which has given a landmark judgement by upholding the SEBI Order in the case and held that SEBI as the absolute jurisdiction in this case as regulator and the



duty to protect Investors safety .Directors which is a dominating principle.

SEBI as jurisdiction in this case in the following grounds

- Securities include hybrid
- A case of private placement
- Section 55 A of the companies Act

Dominant principles of Corporate Criminal Liability

Includes Lifting off Corporate Veil by the way of the persons being the corporation who are committing wrongful activities can be held liable. Along with it the concept of Corporate social Responsibility is also important

Along with it there is a involvement of Criminal Liability which is being implied on in the case.

Conclusion

Thereby the Case of Sahara vs SEBI is an classic example of a Corporate offence and by holding The Sahara Group Chairman liable we can see that the director or promoter of a company who creates other companies for fraudulent activities can be held liable. Apart from this how investments which are made in the Registered companies who don't go public in the market is being misused by these companies which is causing a loss to the economy.
