

**BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA, MUMBAI
CORAM: S. RAMAN, WHOLE TIME MEMBER**

ORDER

UNDER SECTIONS 11(1) AND 11B OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH REGULATION 10(4) OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (PORTFOLIO MANAGERS) REGULATIONS, 1993.

IN THE MATTER OF SAHARA ASSET MANAGEMENT COMPANY PRIVATE LIMITED (PAN: AAACF1696A), PORTFOLIO MANAGER [SEBI REGISTRATION NUMBER: PM/INP000001868].

Background –

1. Sahara Asset Management Company Private Limited (“**Sahara AMC**”) was granted a Certificate of Registration as Portfolio Manager by Securities and Exchange Board of India (“**SEBI**”) in accordance with Regulation 8 of the SEBI (Portfolio Managers) Regulations, 1993 (“**Portfolio Managers Regulations**”), for the period from October 16, 2006 to October 15, 2009.
2. Thereafter, Sahara AMC was granted a renewal of the aforementioned Certificate of Registration in accordance with Regulation 9 of the Portfolio Managers Regulations, which was valid from October 16, 2009 to October 15, 2012.
3. Subsequently, SEBI was in receipt of an application dated July 6, 2012, from Sahara AMC for renewal of Certificate of Registration as Portfolio Manager. The aforesaid application was made in accordance with Regulation 9(1) of the Portfolio Managers Regulations i.e. three months before the expiry of the validity of Certificate of Registration.
4. Upon detailed consideration of the application dated July 6, 2012, SEBI, vide letter dated July 11, 2014, informed Sahara AMC that *prima facie* it appeared that it was not a '*fit and proper person*' eligible for renewal of Certificate of Registration and advised that entity to state why its application for renewal should not be rejected under Regulation 10 of the Portfolio Managers Regulations for the reasons mentioned therein.
5. Sahara AMC filed its reply to the abovementioned SEBI letter, vide its letter dated July 28, 2014.

6. Pursuant to receipt of reply and in conformity with the requirements of Regulation 10(1) of the Portfolio Managers Regulations, an opportunity for personal hearing was granted to Sahara AMC, on December 4, 2014. In its replies/written submissions and during the aforesaid hearing, Sahara AMC *inter alia* made the following submissions –
- i. The SEBI letter dated July 11, 2014, proceeds on a completely incorrect/erroneous basis since it considered the Orders and action initiated or pending against the Directors, Promoters and the associate entities in order to determine whether Sahara AMC is a '*fit and proper person*'.
 - ii. The fit and proper provisions of Portfolio Managers Regulations and Securities and Exchange Board of India (Intermediaries) Regulations, 2008 ("**Intermediaries Regulations**") do not provide for SEBI to take into consideration the criteria in relation to '*associate companies*' of the applicant for determining whether Sahara AMC is a '*fit and proper person*'. Therefore, even though various proceedings are pending against certain Sahara group entities, no regulatory action/proceedings have been initiated/or pending against Sahara AMC before any Court/Tribunal/Authority.
 - iii. The provisions of Portfolio Managers Regulations and Intermediaries Regulations do not provide for SEBI to take into consideration the criteria in relation to '*promoters*' of Sahara AMC for determining whether the applicant is '*fit and proper person*'.
 - iv. SEBI, vide its letter dated July 11, 2014, tried to place reliance on *ex-post facto* facts to reject the renewal application of Sahara AMC.
 - v. Sahara AMC has been diligently and in a *bona fide* manner, managing all its clients' investments as per the provisions of the Portfolio Managers Regulations since 2006 and there have been no deficiencies/investor complaints with regard to its portfolio management operations. There are no regulatory actions/proceedings pending against Sahara AMC and/or its key management person.

Consideration of Issue –

7. I have considered the SEBI letter dated July 11, 2014, issued to Sahara AMC, its reply to the same alongwith the submissions made during the personal hearing before me and all other relevant material available on record. In light of the same, I shall now proceed to deal with the merits of the case.
- 8.1 The issue for determination in the instant matter is whether Sahara AMC is a '*fit and proper person*' for the purpose of renewal of Certificate of Registration as a Portfolio Manager.

- 8.2 Before proceeding further, it is pertinent to refer to the relevant provisions of the Portfolio Managers Regulations, which read as under:

"Portfolio Managers Regulations –

3. Registration as portfolio manager.

No person shall act as portfolio manager unless he holds a certificate granted by the Board under these regulations:

Provided that a merchant banker acting as a portfolio manager immediately before commencement of the Securities and Exchange Board of India (Portfolio Managers) (Second Amendment) Regulations, 2006 may continue to do so for a period of six months from such commencement or, if he has made an application for registration under these regulations within the said period of six months, till the disposal of such application.

6. Consideration of application.

(1) For considering the grant of certificate of registration to the applicant, the Board shall take into account all matters which it deems relevant to the activities relating to portfolio management.

*(2) Without prejudice to the generality of the foregoing provisions, the Board shall consider whether –
... (j) the applicant is a fit and proper person;*

6A. Criteria for fit and proper person.

For the purposes of determining whether an applicant or the portfolio manager is a 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.

9. Renewal of certificate.

(1) A portfolio manager may, three months before the expiry of the validity of the certificate, make an application for renewal in Form A along with fees specified in clause 1 of Schedule II.

(2) The application for renewal, under sub-regulation (1) shall be dealt with in the same manner as if it were an application for grant of a certificate made under regulation 3.

(3) The Board, on being satisfied that the applicant fulfills the requirements specified in regulation 6, shall send an intimation to the applicant and on receipt of payment of renewal fees as specified in paragraph 2 of Schedule II, grant a renewal of the certificate.

10. Procedure where registration is not granted.

(1) Where an application for grant of a certificate under regulation 3 or of renewal under regulation 9 does not satisfy the requirements set out in regulation 6, the Board may reject the application, after giving an opportunity of being heard.

(2) The refusal to grant registration shall be communicated by the Board within thirty days of such refusal to the applicant stating therein the grounds on which the application has been rejected.

(3) Any applicant may, being aggrieved by the decision of the Board under sub-regulation (1), apply within a period of thirty days from the date of receipt of such intimation, to the Board for reconsideration of its decision.

(4) The Board shall reconsider an application made under sub – regulation (3) and communicate its decision as soon as possible in writing to the applicant.

11. Effect of refusal to grant certificate.

Any portfolio manager whose application for a certificate has been refused by the Board shall on and from the date of the receipt of the communication under sub–regulation (2) of regulation 10 cease to carry on any activity as portfolio manager.

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. Promoters, Directors and Shareholding Pattern in Sahara AMC –

9.1 In their application dated July 14, 2012, Sahara AMC submitted the following information –

I. Promoters –

- a. Sahara India Financial Corporation Limited (SIFCL);
- b. Sahara India Corp Investment Limited (SICIL);
- c. Sahara Prime City Limited;
- d. Sahara Care Limited.

II. Directors:

- a. Shri Om Prakash Srivastava;
- b. Shri Ramesh M Joshi;
- c. *Shri Subrata Roy Sahara (resigned w.e.f. September 3, 2014) and Shri C Kamdar (resigned w.e.f. November 26, 2014) were earlier Directors who have resigned i.e. subsequent to issuance of SEBI letter dated July 11, 2014;*
- d. Shri Subhash Chander Gupta (*His appointment as Director was informed vide Sahara AMC's letter dated January 15, 2014*).

III. Shareholding pattern (Equity Shares) in Sahara AMC –

Sr. No.	Name of Shareholder	Type of Shares	% of total equity share capital
1	Sahara India Financial Corporation Limited ("SIFCL")	Equity	46
2	Sahara India Corp Investment Limited ("SICIL")	Equity	11
3	Sahara Prime City Limited ("SPCL")	Equity	11
4	Sahara Care limited	Equity	32
Total			100

9.2 The shareholding pattern of SIFCL (an entity which is stated to be regulated by the Reserve Bank of India), one of the Promoters of Sahara AMC, is provided below –

Sr. No.	Name of Shareholder	% of Equity Holding
1.	Shri Subrata Roy Sahara	79.798
2.	Smt. Swapna Roy	8.722
3.	Shri Om Prakash Srivastava	5.608
4.	Shri Joy Broto Roy	5.608
5.	Shri Ishtiaque Ahmad	0.022
6.	Shri D. K. Srivastava	0.022
7.	Shri S. K. Singh	0.022
8.	Shri Abdul Dabeer	0.022
9.	Shri Zia Qadri	0.022
10.	Shri Vivek Sahai	0.022
11.	Shri Tridip Narain Roy	0.022
12.	Shri A. K. Srivastava	0.022
13.	Shri Ashok Roy Chaudhary	0.022
14.	Shri Jarnal Ahmad Khan	0.022
15.	Shri S. K. Sharma	0.022
16.	Shri. K. K. Sarkar	0.022
Total		100.000

9.3 The details regarding the number of clients of Sahara AMC alongwith assets under management for the period from July 2012 – January 2015, are provided below –

Month	No. of Clients	Assets Under Management (₹ in Lakhs)
Jun-12	8	41.37
Jul-12	8	41.62
Aug-12	8	42.51
Sep-12	8	45.32
Oct-12	8	44.44
Nov-12	8	45.76
Dec-12	8	46.36
Jan-13	8	45.63
Feb-13	8	43.17
Mar-13	8	41.64
Apr-13	8	43.22
May-13	8	42.80
Jun-13	8	41.92
Jul-13	8	39.68
Aug-13	8	38.54
Sep-13	8	41.55
Oct-13	8	44.82
Nov-13	7	41.17
Dec-13	7	44.40
Jan-14	7	43.08
Feb-14	7	44.30
Mar-14	8	71.87
Apr-14	8	67.36
May-14	7	72.12
Jun-14	7	77.81
Jul-14	7	78.73
Aug-14	7	79.59
Sep-14	7	82.00
Oct-14	7	83.57
Nov-14	7	85.72
Dec-14	7	83.40
Jan-15	6	76.67

10. Promoters, Directors and Shareholding Pattern in the Promoter Companies of Sahara AMC –

10.1 During the personal hearing before me, I had directed Sahara AMC to submit the following information, viz. –

- a. Shareholding of its Promoter Companies;
- b. Confirmation of whether Shri Subrata Roy Sahara is a Director in any of the Promoter Companies;
- c. Details of the present Board of Directors.

10.2 Vide its reply dated December 31, 2014, Sahara AMC submitted: "... *the following persons currently constitute the Board of Director of the Sponsor Company, SIFCL:*

- i. Shri Om Prakash Srivastava, Whole Time Director;*
- ii. Shri Madhukar, Director;*
- iii. Shri Subrata Roy Sahara, Director;*
- iv. Smt. Samreen Zaidi, Director."*

Findings –

11. As per Regulation 6(1)(f) of Portfolio Managers Regulations, while granting a certificate of registration the Board *shall take into account all matters which it deems relevant to the activities relating to portfolio management* including considering whether or not the applicant entity is a '*fit and proper person*'. Further, as per Regulation 6A of Portfolio Managers Regulations, SEBI may take into account the criteria specified in Schedule II of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008 ("**Intermediaries Regulations**") for determining whether an applicant entity is a '*fit and proper person*'.

12. A combined reading of the above provisions of '*fit and proper person*' makes it amply clear that while considering any application for grant of registration as any intermediary, the applicant has to pass the test of being a '*fit and proper person*'. For the purpose of performing such test, it is necessary to apply the eligibility criteria on the applicant entity as well as the persons who hold responsible positions in the body corporate and/or are in a position to influence the decision making process.

13. It may be pertinent to note that during the hearing before me, Sahara AMC was directed to submit details pertaining to the shareholding of its Promoter Companies. However, the said

information has not been provided by Sahara AMC in its reply dated December 31, 2014 or thereafter.

14. Upon a consideration of the preceding paragraphs, I find that Shri Subrata Roy Sahara, who is a substantial shareholder in SIFCL (as per information submitted by Sahara AMC and which is reproduced at paragraph 9.2), is in an important position to exercise control and influence over the activities of that company. The directing mind and will of a company is found out by the factor of substantial controlling interest. In the facts of the instant matter, Shri Subrata Roy Sahara enjoys controlling interest and represents the directing mind and will of SIFCL. Such substantial controlling interest entailing significant influence will also extend to Sahara AMC since SIFCL is one of the major Promoters of Sahara AMC. In addition, all the other Promoters of Sahara AMC are also companies of the Sahara group. Therefore, for the purpose of determining whether Sahara AMC is a '*fit and proper person*', the criteria as contained in Schedule II of the Intermediaries Regulations shall be extended to include Shri Subrata Roy Sahara since through SIFCL, he exercises substantial controlling interest entailing significant influence in that company and also through the other Promoter Companies. At this juncture, I place reliance upon the Order of Hon'ble Securities Appellate Tribunal ("**SAT**") in the matter of *Jermyn Capital LLC vs. SEBI (Appeal No. 21/2006)*, wherein it observed:

"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. ..."

15. From the material available on record, it is noted that the following adverse actions subsist against Shri Subrata Roy Sahara and companies of the Sahara group:

- a. SEBI, vide Order dated June 23, 2011, had directed as under:

- i. *Sahara Commodity Services Corporation Limited [earlier known as Sahara India Real Estate Corporation Limited ("**SIRECL**") and Sahara Housing Investment Corporation Limited ("**SHICL**") and its Promoter, Shri Subrata Roy Sahara, and the directors of the said companies, namely, Ms. Vandana Bhargava, Shri Ravi Shankar Dubey and Shri Ashok Roy Choudhary, jointly and severally, shall forthwith refund the money collected by the aforesaid companies through the Red Herring Prospectus dated March 13, 2008 and October 6, 2009, issued respectively, to the*

- subscribers of such Optionally Fully Convertible Debentures with interest of 15% per annum from the date of receipt of money till the date of such repayment.*
- ii. Such repayment shall be effected only in cash through Demand Draft or Pay Order.*
 - iii. SIRECL and SHICL shall issue public notice, in all editions of two National Dailies (one English and one Hindi) with wide circulation, detailing the modalities for refund, including details on contact persons including names, addresses and contact details, within fifteen days of this Order coming into effect.*
 - iv. SIRECL and SHICL are restrained from accessing the securities market for raising funds, till the time the aforesaid payments are made to the satisfaction of the SEBI.*
 - v. Further, Shri Subrata Roy Sahara, Ms. Vandana Bhargava, Shri Ravi Shankar Dubey and Shri Ashok Roy Choudhary are 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 are made to the satisfaction of the Securities and Exchange Board of India.*
- b. The Hon'ble Supreme Court of India vide its Order dated August 31, 2012 and December 5, 2013, *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 interest @15% per annum from the date of receipt of the subscription amount till the date of repayment within 3 months from the date of that Order. In addition to the above, vide Direction No. 10 of Order dated August 31, 2012, that Court directed that if SIRECL and SHICL 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 realizing these amounts.
- c. Subsequently, vide Orders dated February 13, 2013, SEBI, directed freezing of all bank accounts/demat accounts of Shri Ashok Roy Choudhary, Shri Ravi Shanker Dubey, Smt. Vandana Bhargava and Shri Subrata Roy Sahara. Further, it was directed to attach all movable and immovable properties standing in the names of the aforesaid persons.
- d. The Hon'ble Supreme Court of India vide Order dated November 21, 2013, held that Sahara Group of Companies shall not part any movable or immovable properties until further orders.
- e. The Hon'ble Supreme Court of India vide Order dated March 4, 2014, ordered detention of Shri Subrata Roy Sahara and send him to judicial custody at Delhi. Shri Subrata Roy is still under judicial custody.

- f. Two criminal complaints have been filed by SEBI under Section 24(1) read with Section 27 of the SEBI Act, 1992 ("**SEBI Act**"), against SHICL and its 4 Directors/Promoters, viz. Shri Ashok Roy Choudhary, Shri Ravi Shanker Dubey, Smt. Vandana Bhargava and Shri Subrata Roy Sahara; and against SIRECL and its aforesaid 4 Directors/Promoters, for violation of various provisions of SEBI (DIP) Guidelines, 2000 and SEBI (ICDR) Regulations, 2009 and for violation of various provisions of Companies Act, 1956. The aforesaid matters, which were filed before 9th Addl. Chief Metropolitan Magistrate Court at Bandra, Mumbai, were subsequently transferred to the Sessions Court at Bombay. The Ld. Judge agreeing with the submissions advanced by the SEBI counsel, passed an Order on January 27, 2015, issuing summons to the accused i.e. SHICL and its 4 Directors/Promoters and SIRECL and SHICL and its 4 Directors/Promoters, in accordance with the submissions made in the application. The matter is pending before that Court.
- g. Adjudication proceedings have been initiated by SEBI under the SEBI Act, against SIRECL, SHICL, its Promoter, Shri Subrata Roy Sahara and its Directors, Shri Ashok Roy Choudhary, Shri Ravi Shanker Dubey and Smt. Vandana Bhargava.
16. As a regulator, SEBI has been assigned a statutory duty to protect the interests of investors in securities and regulating the market by such measures as it may think fit. It is in the discharge of this statutory obligation that the Portfolio Managers Regulations have been framed by SEBI. The antecedents of persons exercising substantial controlling interest entailing significant influence over the applicant is therefore, a critical factor to be taken into account for considering/assessing the eligibility criteria of such applicant as a portfolio manager. Indeed such a determination becomes very vital and imperative for ensuring the integrity of securities market. In view of the preceding paragraphs, I have no hesitation in concluding that Sahara AMC does not comply with the eligibility criteria of being a '*fit and proper person*' in accordance with the Portfolio Managers Regulations in view of adverse actions subsisting against Shri Subrata Roy Sahara and companies of the Sahara group as detailed in paragraph 15.
17. In their reply dated July 28, 2014 and submissions made during the hearing before me, Sahara AMC has contended that SEBI placed reliance on *ex-post facto* facts to reject its renewal application. It would not be in the interest of investors if material facts, which have come to notice after the application for renewal of Certificate of Registration was made by Sahara AMC, are not taken into account while considering such application. Even prior to submission of application for renewal of Certificate of Registration by Sahara AMC, adverse actions initiated by SEBI *inter alia* against Shri Subrata Roy Sahara and some other companies of the Sahara

group, subsisted. Therefore, I find that the contention of Sahara AMC that *ex-post facto* facts should not be considered for grant of registration is devoid of merit and hence, not legally tenable.

Conclusion –

- 18.1 I note that it is the duty of SEBI to ensure that the securities market functions in a fair and free manner. In this regard, reference may be made to the following observations of the Hon'ble Supreme Court in its judgment dated April 26, 2013, in *N. Narayanan v. Adjudicating Officer SEBI (Civil Appeal Nos.4112-4113 of 2013)* wherein it held that: "*SEBI, the market regulator, has to deal sternly with companies and their Directors indulging in manipulative and deceptive devices, insider trading etc. or else they will be failing in their duty to promote orderly and healthy growth of the Securities market. Economic offence, people of this country should know, is a serious crime which, if not properly dealt with, as it should be, will affect not only country's economic growth, but also slow the inflow of foreign investment by genuine investors and also casts a slur on India's securities market. Message should go that our country will not tolerate "market abuse" and that we are governed by the "Rule of Law". Fraud, deceit, artificiality, SEBI should ensure, have no place in the securities market of this country and 'market security' is our motto.*"
- 18.2 As envisaged in the *'fit and proper person'* criteria, SEBI has to take into account the financial integrity, honesty, good reputation and character of the applicant. The role of the Portfolio Manager as a market intermediary is indeed very crucial, especially as a portfolio manager handles money kept with him in fiduciary capacity. As a regulator of the securities market, SEBI indeed has to take into consideration important facts such as prosecution proceedings, detention order, etc. pending against the persons ultimately controlling or influencing Sahara AMC, while considering its eligibility as a portfolio manager. Keeping Sahara AMC in the mainstream market after considering the antecedents of Shri Subrata Roy Sahara and some other companies of the Sahara group, may cause prejudice to the interests of investors and the safety and integrity of the securities market. I am, therefore, of the firm opinion that the applicant is not a *'fit and proper person'* to act as a Portfolio Manager in the Indian securities market.

Order –

- 19.1 Having regard to the above discussion, I, in exercise of the powers conferred upon me in terms of Section 19 of the SEBI Act read with Regulation 10 of the Portfolio Managers Regulations, hereby reject the application for renewal of Certificate of Registration as a portfolio manager, submitted by Sahara AMC (PAN: AAACF1696A).
- 19.2 In view of paragraph 19.1 –
- a. The Certificate of Registration granted to Sahara AMC) as a Portfolio Manager [**SEBI Registration Number: PM/INP000001868**], shall stand cancelled after thirty days from the date of receipt of this Order.
 - b. During the intervening period, Sahara AMC shall not take on new clients in its business under the abovementioned Certificate of Registration.
- 19.3 Sahara AMC shall, within thirty days from the date of cancellation of Certificate of Registration as a Portfolio Manager, transfer its business to another SEBI registered portfolio manager or allow the client to withdraw the securities and funds in its custody at the option of the client, and in either case, without any additional cost to the client. The option shall be granted to each client separately.
- 19.4 All clients of Sahara AMC are hereby served noticed of this Order displayed on the website of SEBI – www.sebi.gov.in.

Place: Mumbai
Date: February 27, 2015

S. RAMAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA