

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Order Reserved on: 27.06.2017

Date of Decision : 28.07.2017

**Misc. Application No. 188 of 2017
And
Appeal No. 428 of 2015**

1. Sahara Asset Management Company P. Ltd.
97-98, 9th Floor, Atlanta,
Nariman Point,
Mumbai – 400 021.
2. Sahara Mutual Fund
97-98, 9th Floor, Atlanta,
Nariman Point,
Mumbai – 400 021.
3. Sahara India Financial Corporation Limited
1, Kapoorthala complex,
Lucknow – 226 024.
4. Shri S.R. Hegde
97-98, 9th Floor, Atlanta,
Nariman Point,
Mumbai – 400 021.
5. Dr. P.P. Shastri
97-98, 9th Floor, Atlanta,
Nariman Point,
Mumbai – 400 021.

.....Appellants

Versus

Securities and Exchange Board of India
SEBI Bhavan, Plot No. C-4A,
G-Block, Bandra-Kurla Complex,
Bandra (East),
Mumbai – 400 051.

.....Respondent

Mr. Gaurav Joshi, Senior Advocate with Mr. Piyush Raheja, Mr. Sahil Gandhi and Ms. Vidhi Shah, Advocates i/b Markand Gandhi & Co. for the Appellant.

Mr. Kevic Setalvad, Senior Advocate with Mr. Mihir Mody and Mr. Nishant Upadhyay, Advocates i/b K Ashar & Co. for Respondents.

CORAM : Justice J.P. Devadhar, Presiding Officer
Jog Singh, Member
Dr. C.K.G. Nair, Member

Per : Dr. C.K.G. Nair, Member

1. Appellants are aggrieved by the order dated July 28, 2015 passed by the Whole Time Member ('WTM' for short) of Securities and Exchange Board of India ('SEBI' for short) thereby cancelling the certificate of registration of the Sahara Mutual Fund ('Sahara MF' for short) with consequential transitional directions stated therein. The impugned order has been issued consequent to the findings by SEBI that Sahara India Financial Corporation Ltd. ('Sahara Sponsor' for short) is not a 'fit and proper person' because its Promoter-Director is not a fit and proper person and hence the Sahara MF and Sahara Asset Management Company P. Ltd. ('Sahara AMC' for short) are no longer fit and proper to carry on the business of mutual fund. The legal question that, therefore, arises is if the Promoter-Director of the Sponsor of a mutual fund is found to be not a fit and proper person whether the sponsor itself becomes not fit and proper and if so whether it would impact the fit and proper status of the mutual fund and the AMC under the Mutual Fund Regulations.

2. Before coming to the relevant facts in the present appeal, it is useful to explain the mutual fund framework under the SEBI (Mutual Funds) Regulations, 1996. The structure of a mutual fund stands on three pillars (i) An Asset Management Company, (ii) A Trust and (iii) A Sponsor. In the present matter the structure of the Sahara mutual fund comprises the Sahara AMC (Appellant No. 1), Sahara MF (Appellant No. 2), Sahara Sponsor (Appellant No. 3) and Trustees (Appellant Nos. 4 and 5). According to this framework a sponsor applies for a mutual fund license and SEBI grants a certificate of registration if the eligibility criteria provided under the Mutual

Fund Regulations are satisfied. Among other conditions under Regulation 7, the applicant is to be a fit and proper person as defined under 7A of Mutual Fund Regulations, 1996 read with Schedule-II of the SEBI (Intermediaries) Regulations, 2008 in order to get a certificate of registration from SEBI which is granted subject to the terms and conditions stated under Regulation 10.

3. For convenience of reference the relevant provisions of the SEBI (Mutual Funds) Regulations, 1996 and the SEBI (Intermediaries) Regulations, 2008 are reproduced below:-

“ 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.”

4. Basic facts in this appeal are not disputed. However, for giving a comprehensive background relevant facts are stated as follows:-

(a) On the basis of a Memorandum of Understanding between the Sahara India Financial Corporation Ltd. (Sahara Sponsor) and an existing mutual fund namely First India Mutual Fund, Sahara Sponsor applied to respondent SEBI for becoming sponsor of First India Mutual Fund on March 11, 2003. The appellants submitted all relevant details as per Mutual Fund Regulations. On November 13, 2003 SEBI granted approval to Sahara Sponsor for sponsoring First India Mutual Fund. On March 19, 2004 the Sahara Sponsor acquired 100% of shareholding of First India Asset Management Pvt. Ltd. and subsequently the name of the company was changed to Sahara Asset Management Company P. Ltd. Similarly, on April 1,

2004 on the basis of the request of the Sahara Asset Management Company the name of First India Mutual Fund was changed to Sahara Mutual Fund. Following these organizational changes the appellants herein have been carrying on the activities of the mutual funds as per the provisions of Mutual Fund Regulations.

- (b) SEBI passed an order dated June 23, 2011 against two Sahara group entities namely Sahara India Real Estate Corporation Ltd. (SIRECL), Sahara Housing Investment Corporation Ltd. (SHICL) and some of their Directors to refund the money collected through the issue of Optionally Fully Convertible Debentures (OFCDs) and restrained those Directors from associating themselves with any listed public company and any public company which intends to raise money from the public till such time the money is refunded to the investors to the satisfaction of SEBI. This order was upheld by this Appellate Tribunal on October 18, 2011. The Hon'ble Supreme Court in its order dated August 31, 2012, inter alia, directed these companies and Mr. Subrata Roy Sahara to refund the monies. Subsequently the Apex Court passed several orders / directions in the matter against Mr. Sahara on account of delay in refunding the money.
- (c) Following these orders against the two Sahara group companies and their Directors SEBI initiated proceedings by appointing a Designated Authority under the Intermediaries Regulations on June 9, 2014. This Designated Authority was to enquire into whether there was any violation of the

provisions of Regulation 21 read with Regulation 22 of the Mutual Fund Regulations, 1996 as well as related SEBI Circulars by the Sahara Mutual Fund, Sahara Sponsor, Sahara AMC and its Trustees. The Designated Authority submitted the report on October 14, 2014 holding that these entities are no longer fit and proper persons to carry on the business of mutual fund and recommended cancellation of certificate of registration of Sahara MF. Along with a copy of this report by the Designated Authority SEBI issued a common Show Cause Notice to these entities on November 11, 2014 asking why the certificate of registration of Sahara MF should not be cancelled.

- (d) The impugned order was passed by the WTM of SEBI on July 28, 2015 after considering the report of the Designated Authority, the reply to the Show Cause Notice, submissions made during personal hearing and other material on record.

5. Shri Gaurav Joshi, Learned Senior Counsel for the appellants made the following submissions:-

- (a) The sole reason for the impugned order against the appellants was on account of the proceedings by SEBI against two Sahara Group Companies namely SIRECL and SHICL. But these proceedings were pending since 2010 before SEBI and no action was contemplated or initiated against the appellants herein. There has been no allegation of any violation of Mutual Fund Regulations by the appellants except an alleged non-reporting of an action taken by SEBI against the said two

group companies. Since action was taken by SEBI itself, this information was available with SEBI.

- (b) The appellants herein and the two group entities viz. SIRECL and SHICL are separate legal entities and as such SEBI should not have pierced the corporate veil in proceedings against the appellants herein. Piercing the corporate veil is against the canons of law and only constitutional courts have the power to do so. Settled legal position is that distinct corporate personality of a company can be disregarded only in a situation where the incorporation of the company itself is to perpetuate fraud or to carry out a fraudulent objective. Since no such allegation has been made in the present matter, SEBI could not have disregarded the corporate identity of Sahara Sponsor or Sahara AMC and lifted the corporate veil to look at their shareholders / promoters.
- (c) Under the Mutual Fund Regulations, the requirement of the sponsor being a fit and proper person is limited to the stage of application for the registration of mutual fund. The role of the sponsor company who is the applicant thereafter is very limited. Once the trust and the AMC are setup the sponsor does not play any major role and therefore the continuing liability of the sponsor is very limited. In any case it is the applicant company who acts as the sponsor and who is to be fit and proper not its Promoters or Directors as provided under Mutual Fund Regulations.
- (d) The sponsor is a separate legal entity as distinct from its shareholders and therefore just because one of the

shareholders is allegedly not a fit and proper person it cannot result in the sponsor being declared as not a fit and proper person. The relevant regulations make a distinction between the Company (Sponsor / AMC), its Whole Time Directors, Key Managerial Personnel and other Directors by providing different and independent requirements for each of them under the Regulations.

- (e) Mr. Subrata Roy Sahara who is alleged to be not a fit and proper person by SEBI consequent to the order by SEBI dated June 23, 2011 (supra) is a Non-Executive Director of Sahara Sponsor and did not involve in the day-to-day management of either Sahara Sponsor or in any matter relating to Sahara AMC or Sahara Mutual Fund. He was never a Trustee nor a Director of Sahara Mutual Fund. He resigned from the Sahara Sponsor on September 2, 2014 though subsequently he was reappointed as an Additional Director on November 3, 2014. He was not a KMP or an Officer on default or played any significant role in the management of Sahara Sponsor even while being on the Board of the Sahara Sponsor.
- (f) The information submitted to SEBI in March 2003 at the time of application for mutual fund registration or in March 2004 as bio-data of Mr. Subrata Roy Sahara could not have been relied on by SEBI in the impugned order without any reference to that in the show cause notice. Even otherwise though in 2003 and 2004 Mr. Subrata Roy Sahara claimed management responsibility as Managing Director (Worker) and Chairman of Sahara Sponsor, SEBI was subsequently informed on September 8, 2014 that he ceased to be a Director of Sahara

Sponsor w.e.f. September 2, 2014. Though subsequently he was reappointed as an Additional Director it was as a Non-Executive Director. Thus over the years Mr. Subrata Roy Sahara ceased to play any role in the management of Sahara Sponsor.

- (g) The findings of the Hon'ble Supreme Court relied on by the respondent SEBI relating to the offence of Mr. Subrata Roy Sahara in the case of the two group companies is restricted to the facts in that particular case. The appellants herein were not even parties to those matters and are independent legal entities and hence Mr. Sahara's involvement in the two group companies cannot be transfixed on to the companies in the present appeal. In any case there is no order against Mr. Sahara finding him to be guilty of any offence involving moral turpitude or any economic offence. His detention order by the Hon'ble Supreme Court is only in relation to the issue of non-refund of the amounts ordered to be repaid by SIRECL and SHICL having no bearing in the present matter.
- (h) In conclusion, the Learned Senior Counsel for the appellants stated that the appellants are separate legal entities distinct from the two Sahara Group entities against whom certain orders were passed by SEBI. Those two Sahara Group entities have no shareholding in the appellant entities herein. Being separate legal entities SEBI could not have enquired into the private actions of one of the Directors in the group companies thereby lifting the corporate veil which is against canons of justice. There is no allegation that the appellants herein have

ever violated any of the provisions of Mutual Fund Regulations. The role of the sponsor is similar to that of a 'settlor' of a Trust and thereby the fit and proper criteria applicable to the sponsor is limited to the time of application for registration of Mutual Fund. The Sponsor has no major continuing liability once the mutual fund framework in terms of the Asset Management Company and the Trustees are put in place. There is no case that the Trustees are not fit and proper. In any case Mr. Sahara who is allegedly not a fit and proper person has resigned from the Board of the Sahara AMC as well as from the Board of Sahara Sponsor though he was subsequently reappointed as the Non-Executive Director in the latter. He was neither a KMP nor has any day-to-day management functions in Sahara Sponsor. Thus while the Applicant Company for sponsorship of a Mutual Fund is to be fit and proper the same is not extended to its Non-Executive Directors who are not included amongst the officials / entities to be fit and proper as per Regulation 7 of the Mutual Fund Regulations. Thus, the charge levelled against the appellants herein just because one of the Promoters / Directors of Appellant No. 3 was found to be involved in the matter of two group companies who are not related to the appellant companies in any way cannot be justified and the impugned order needs to be quashed and set aside.

- (i) In order to substantiate their submissions the Learned Senior Counsel for the appellants, apart from distinguishing the judgments relied on by SEBI in the impugned order, cited a

number of judgments, details of which will be dealt with in a subsequent section of this order.

6. Shri Kevic Setalvad, Learned Senior Counsel for SEBI, defending the impugned order, submitted as follows:-

- (a) The impugned order draws its mandate from Section 12(3) of the SEBI Act, 1992 which empowers SEBI, by order to suspend or cancel a certificate of registration in such manner as may be determined by the Regulations. Accordingly, the relevant provisions of Mutual Fund Regulations, 1996 and Intermediaries Regulations 2008 have been invoked in deciding whether the appellants are fit and proper.
- (b) The Appellant No. 3 as the Sponsor of Sahara Mutual Fund (Appellant No. 2) holds 40.12% of the equity in Sahara AMC which along with preference shareholding becomes 46%. The remaining equity in the Sahara AMC is held by other Sahara Group Companies. Preferential shares of Sahara AMC are also held by Sahara group entities.
- (c) Mr. Subrata Roy Sahara holds 79.80% of the equity in the Sahara Sponsor and 53.34% of its preference shareholding. An additional 8.78% of equity is held by the wife of Mr. Subrata Roy Sahara thereby making the total shareholding of Mrs. and Mr. Subrata Roy Sahara more than 87% in Sahara Sponsor.
- (d) The Hon'ble Supreme Court in its order dated May 5, 2014 while dealing with the list of properties belonging to the

Sahara Group Companies and furnished by the Petitioner Mr. Subrata Roy Sahara in the matter of SIRECL and SHICL observed that “*nothing can move without his (Mr. Sahara) active involvement in the affairs of the Sahara Group Mr. Subrata Roy Sahara is the only person that matters.*”

- (e) As stated by the Hon’ble Supreme Court nothing moves in the Sahara Group Companies without the consent of Mr. Subrata Roy Sahara and therefore he has full and complete control of the Group Companies. This is despite the fact that in the case SIRECL and SHICL, shareholding of Mr. Subrata Roy Sahara is not high as in the case of Sahara Sponsor in the present appeal.
- (f) The arguments made by Learned Senior Counsel for the appellants that the refund order passed by the Hon’ble Supreme Court is against the two Sahara Group Companies and not against Mr. Subrata Roy Sahara himself is not correct because the said order sets out that the refund has to be made jointly and severally by these Companies and Mr. Sahara.
- (g) Citing various provisions in the Mutual Fund Regulations it was argued that the sponsor’s liability and responsibility for operations and activities of the mutual fund is continuous.
- (h) According to Regulation 7(aa) of the Mutual Fund Regulations, the applicant (sponsor) is required to be a fit and proper person. Both the applicant company as well as its Directors are to be fit and proper because of the fact that the Directors have to file certain proforma giving their full details

and they are under obligation to file any change in their status as and when it happens. While filing such proforma in 2003 and 2004 Mr. Subrata Roy Sahara had stated that he was the Managing Worker and Chairman of the Sahara Sponsor, with substantive powers over the management of the Company.

- (i) Fit and proper criteria is to be taken from Schedule II of SEBI (Intermediaries) Regulations, 2008 which provides that the applicant or intermediary, the principal officer and key management persons by whatever name called should have:
- (i) Integrity, reputation and character;
 - (ii) Absence of convictions and restraint orders;
 - (iii) Competence including solvency and net worth

and under Regulation 11 of Mutual Fund Regulations if the sponsor does not satisfy the stated eligibility criteria the application is liable to be rejected.

- (j) The orders passed by Hon'ble Supreme Court (cited earlier) clearly indicates that Mr. Subrata Roy Sahara's integrity, reputation and character are of doubtful nature and there are restraint orders against him and his Group Companies. Therefore the findings in the impugned order that he is not a fit and proper person cannot be faulted. Mr. Sahara owns 80% of the equity capital and 53% of the preference capital of the Sahara Sponsor and is in an absolute position to control the Sahara Sponsor which makes the Sahara Sponsor also not a fit and proper person. Though subsequent to receiving the Show Cause Notice in the present matter Mr. Sahara resigned from the Board of Directors of Sahara Sponsor on September 2, 2014, he rejoined the Board of Sahara Sponsor on November

3, 2014. He was also a Director of Sahara AMC till September 8, 2014.

- (k) Though Mr. Sahara was obliged to file changes in his status as provided in Mutual Fund Regulations subsequent to the orders of SEBI and the judgments of the Hon'ble Supreme Court cited above, he did not submit this information to SEBI. The argument that this fact was known to SEBI cannot be accepted because it is mandated on the Sahara Sponsor to file returns and affidavits, as per the Regulations.
- (l) Citing various judgments it was submitted that lifting of corporate veil is allowed when it is intended to find out who is acting on behalf of the company to judge whether the company satisfies the fit and proper criteria in the interest of justice. Being mandated to secure the interest of investors SEBI is statutorily empowered to lift the corporate veil if required to establish real corporate identity in terms of ownership and control.
- (m) The belated resignation of Mr. Subrata Roy Sahara from the Board of Directors of the Sahara Sponsor on March 22, 2017 as per an undertaking given to this Appellate Tribunal does not alter the position with respect to his control over the Sahara Sponsor, since his shareholding continues to be as high as it was at the time of the impugned order.
- (n) Though subsequent to the impugned order, the Reserve Bank of India (RBI) vide its order dated September 3, 2015 cancelled the certificate of registration of Sahara Sponsor to

function as an NBFC and has also initiated action to wind up this company. Accordingly, the Lucknow Bench of the Allahabad High Court vide its order dated September 16, 2015 restrained the Sahara Sponsor from alienating its assets.

- (o) The Learned Senior Counsel for SEBI also opposed the Misc. Applications No. 188 of 2017 moved by the appellants seeking time to fulfill the requirement of raising its net worth from Rs. 10 crore to 50 crore pending the outcome of this appeal stating that when appellants are not a fit and proper person this issue does not even deserve any consideration.
- (p) Learned Senior Counsel for the SEBI also relied on a number of judgments in support of his contentions.

7. We have considered the submissions of both the parties, various judgments and other records placed before us.

8. We do not agree with the contentions of the Learned Senior Counsel for the appellants. The argument that the requirement of being fit and proper for the sponsor of a mutual fund is limited to the stage of application for registration is devoid of any merit. Various provisions of the Mutual Fund Regulations, 1996 clearly spell out the continuing obligation of the sponsor. This is emphasized by Regulations 25(20), 28(4), 18(24), 38(a), 52, 58(1) etc. whereby the continued liability of compensating the affected investors, stake-holding in new fund offers, guaranteeing guaranteed return schemes, liability on expenses exceeding certain limits and periodic disclosures to be made to SEBI etc. are mandated on the Sponsor. All these provisions indicate clear and continued action and obligation of the sponsor in the Mutual Fund.

9. The argument that only the Applicant Company as a sponsor is to be fit and proper and the requirement that the Promoter / Director need not be fit and proper cannot be accepted. Regulation 7A of the Mutual Fund Regulations, 1996 read with Schedule-II of the SEBI (Intermediaries) Regulations, 2008 specify that the fit and proper criteria applies to the Principal Officer and the key managerial persons of the sponsor by whatever name called and should possess integrity, reputation and character; absence of any convictions and restraint orders and competence including solvency and net worth. We note that the documents submitted by Mr. Subrata Roy Sahara at the time of filing applications on behalf of the Sahara Sponsor for the mutual fund registration clearly indicated his designation as the Managing Director (Worker) and Chairman against the Key Managerial Personnel of the Applicant. In the absence of any further documentation this position continued till he resigned from the Board of the Sahara Sponsor on September 2, 2014. He was also in the Board of Directors of the Sahara AMC till September 8, 2014. Therefore, the argument of the appellants that Mr. Subrata Roy Sahara is not a Principal Officer or key managerial personnel of the Sahara Sponsor is devoid of any merit.

10. It is an admitted fact that Mr. Subrata Roy Sahara holds 79.80% of the equity capital of Sahara Sponsor and 53.34% of its preference capital. Even after the resignation of Mr. Subrata Roy Sahara there is no change in this equity / preference holding. It is also a fact that the full equity / preference holding in the Sahara AMC is also held by the Sahara Sponsor and other Sahara Group Companies together though two of its group companies SIRECL and SHICL are not holding any equity in the Sahara AMC. It is also on record that Mr. Sahara was a Director in all the Group Companies which hold the shares of Sahara AMC. Such high shareholding

in the sponsor by one promoter and in the AMC by the same promoter group companies clearly establish the capability of that one Promoter / Director to control the affairs of the Sahara Sponsor and thereby that in the Sahara AMC and Sahara Mutual Fund. Therefore, even if Mr. Sahara ceases to be a Director in the Sahara Sponsor, given the facts of the present matter, his ability to control the activities of the Sahara Mutual Fund cannot be doubted. This is made abundantly clear by the order of the Hon'ble Supreme Court dated May 6, 2014 wherein it is stated that:-

“The list of properties furnished to this Court, could not be have been so furnished, without the petitioner’s express approval. There can be no doubt about the aforesaid inference, because the stance now adopted by the petitioner shows, that the petitioner is in absolute charge of all the affairs of the companies. And nothing can move without his active involvement. During the course of hearing of the present petitioner, learned counsel have repeatedly emphasized that further deposits will be possible, only after the petitioner is released from judicial custody. This stance shows, that in the affairs of the Sahara Group, Mr. Subrata Roy Sahara, is the only person that matter. And therefore, the other individual directors, may have hardly any say in the matter.”

Therefore, the findings in the impugned order that Mr. Subrata Roy Sahara exercises full and complete control of the Sahara Sponsor and Sahara AMC cannot be disputed. In view of this, Mr. Sahara’s resignation from the Board of Directors of the Sahara Sponsor on March 22, 2017 does not alter the ground reality regarding his control over the Sahara Sponsor in which he continue to hold about 80% of the equity capital.

11. We find no merit in the arguments of the appellants that the Sahara Sponsor need not have to make separate declarations under the Mutual Fund Regulations on account of the orders against the group companies and their Promoters / Directors as applicable to Mr. Subrata Roy Sahara since these facts were known to SEBI. Fact that SEBI may be knowing is not a ground

for not filing the periodic statements / declarations as and when status of the sponsor changes as provided for under the relevant regulations. Since Mutual Fund Regulations state that change in status must be informed it has to be done as and when required. Accordingly, the finding in the impugned order that the Sahara Sponsor did not file the correct position relating to the fit and proper status of its lead Promoter and Director consequent to the SEBI order dated June 23, 2011 on the two group companies cannot be faulted.

12. The requirement that the fit and proper criterion of an entity is continuous as long as its obligation continues has been upheld in a number of judgments. Further, under Regulation 7A of the Mutual Fund Regulations, 1996 apart from the sponsor / applicant it is stated that the mutual fund also needs to be fit and proper person which makes it clear that the fit and proper criteria needs to be complied with by all the three pillars of the mutual fund framework during the existence of the mutual fund.

13. The Learned Counsel for the appellant stated that there was no suppression of facts by the appellants. It was argued that circulars dated December 20, 2001 and August 29, 2002 show that the bio-data requirements were applicable to independent directors only and hence there was no requirement for filing fresh bio-data in respect of Mr. Sahara. We do not agree with this argument since the details of the circular clearly indicate that the circulars were applicable to all directors, not only to independent directors though the title of the circular mentioned independent directors.

14. The appellants have cited several orders such as (i) Heavy Engineering Mazdoor Union vs. State of Bihar and Ors. [(2004) 9 SCC 407], (ii) Bacha F. Guzdar vs. Commissioner of Income Tax, Bombay [AIR

1955 S.C. 74 (vol. 42. CN.18)], (iii) Electronics Corporation of India Ltd. and Others vs. Secretary, Revenue Department, Govt. of Andhra Pradesh and Others [(1999) 4 Supreme Court Cases 458], (iv) [Court of Appeal] Adams and Others vs. Cape Industries Plc. And Another (1984 A. No. 2597), (v) Balwant Rai Saluja and Anr. vs. Air India Ltd. and Ors. [(2014) 9 SCC 407] (vi) Western Coalfields Ltd. vs. Special Area Development Authority, Korba & Ors. [(1982 1 SCC 125], (vii) Delhi Development Authority vs. Skipper Constructions Co. Pvt. Ltd. and Anr. [(1996) 4 SCC 125] and (viii) Digital Radio (Mumbai) Broadcasting Ltd. and Ors. vs. Union of India [222 (2015) DLT 243]. Citing these orders it was argued that a company is a separate juristic person distinct from the promoters / directors; corporate veil cannot be lifted except in matters of fraud etc. The impugned order does not state that the company is not a distinct juristic person nor corporate veil can be lifted arbitrarily. The facts relating to the cited judgments and the facts in the present appeal are distinguishable. The order in Heavy Engineering Mazdoor Union (supra) is in the context of the application of holidays under the Industrial Disputes Act. Bacha F. Guzdar (supra) is in the context tax liability of an ordinary shareholders dividend. Order in respect of Electronics Corporation of India Ltd. (supra) is regarding the power of the State Government to levy tax on the company land etc; the order of the Court of Appeals is on lifting the corporate veil except where corporate identity is a mere facade concealing the true facts. Balwant Rai Saluja (supra) is in the context of Air India's responsibility to the employees hired by its subsidiaries; Order on Western Coalfields Ltd. (supra) in the context of taxation powers of the Special Area Authority and the order of Delhi Development Authority (supra) is in the context of willful disobedience of the court orders which specifically states that 'lifting veil is not allowed except where protection of public interest is of paramount importance'.

15. The present appeal before us is regarding the fit and proper status of a Promoter / Director of Sahara Sponsor who holds about 80% of its capital and who controls all Sahara Group Companies and hence on the fit and proper status of Sahara Sponsor to continue as Sponsor of a mutual fund in the context of SEBI / Supreme Court Orders against Mr. Sahara and two Sahara Group Companies. The Mutual Fund Regulations state that the Sponsor Company as well as its Key Managerial Persons or Key Person who controls the Company is to be fit and proper. No cited judgments are issued in the context of the securities market wherein the SEBI Act, 1992 and Regulations under this Act were examined. In the securities market, SEBI Act empowers SEBI to take actions in the interest of protecting the interests of the investors and hence lifting the corporate veil to the extent to identify who controls a regulated entity cannot be faulted. Without such a power SEBI will be a mute spectator to many of the corporate misdeeds which may jeopardize the interests of investors. Given the mandate of SEBI to protect the interests of the investors in the securities market SEBI is statutorily empowered to lift the corporate veil and find out the truth whenever interests of the investors are affected or likely to be affected. In the instant case SEBI itself found that two group companies of Sahara and its Directors were not conducting their business following the rules relating to public issue and were restrained from associating themselves with any listed Company or Company which intends to raise money from the public. It was also found that one of the Promoters / Directors is prima facie holding absolute control over the group companies. Given these facts and circumstances, lifting the corporate veil to the extent of identifying the role of the Promoter / Director in the impugned order cannot be faulted. In this context, the order of this Appellate Tribunal in the matter of Financial Technologies India Ltd. vs. SEBI upholding the order of the WTM of SEBI

holding the appellant company and directors therein not a fit and proper person solely based on the decision of the Forward Markets Commission is relevant. We also note that, though subsequent to the impugned order, the RBI has cancelled the certificate of registration granted to the Sahara Sponsor to carry on the activities of NBFC and has initiated steps to wind up the Sahara Sponsor under the RBI Act, with the Allahabad High Court (Lucknow Bench) restraining the Company from alienating its assets.

16. In the result, we find no merit in the appeal. Accordingly, appeal is dismissed with no order as to costs. Consequently, Misc. Application No. 188 of 2017 becomes infructuous and the same is also disposed of accordingly.

17. After the order was pronounced, the Learned Senior Counsel for the appellants made an oral prayer for staying the operation of the order for a period of 6 weeks to enable the appellants to approach the Hon'ble Supreme Court. Accordingly, 6 weeks stay is granted.

Sd/-
Justice J.P. Devadhar
Presiding Officer

Sd/-
Jog Singh
Member

Sd/-
Dr. C.K.G. Nair
Member

28.07.2017
Prepared and compared by:
msb