Research Paper Commerce

Corporate Social Irresponsibility Towards Investors- a Case Analysis of Sahara Group

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ABSTRACT

The purpose of the present paper is to discuss how Sahara Group could raise so much of money without following the prescribed rules and regulations and how did SEBI come to know about the wrongdoings of these two companies. Ultimately it is the investors who were the losers and this case analyses the corporate irresponsibility of the company in not paying the investors as promised.. It is understood through the present case that though companies may not always be rewarded for social responsibility, irresponsibility is not without price.

KEYWORDS Investors, Corporate social irresponsibility, Sahara Group, SEBI

Introduction:
In the present economic and social environment, issues related to corporate social responsibility and ethics are gaining more and more importance, especially in the business sector. The failure to account for long-term social and environmental impacts makes those business organizations unsustainable.

Earlier, it was measured in terms of charitable contributions, consultations with shareholders chosen by the corporation, and the corporation's own definition of "Best Practices" with regard to worker safety or environmental impact. Being socially responsible is the appropriate practice in any corporate. Now, Corporate Social Responsibility (CSR) can be understood as a management concept and a process that integrates social and environmental concerns in business operations and a company's interactions with the full range of its stakeholders like their customers, employees, shareholders, investors, community and the environment.

Investors are one of the important stakeholders of any company, who fund part of the money by buying shares or a "part ownership" in the company. Companies may pay their investors, dividends — a share of the profits. Modern investors are not short-sighted, they are "strongly interested in a company's overall reputation and public perception, as well as its relationships with specific stakeholders such as customers, employees and public authorities".

It is understood through the present case that though companies may not always be rewarded for social responsibility, irresponsibility is not without price.

Factual Case Summary:
Sahara India Real Estate Corporation Limited (SIRECL) and Sahara Housing Investment Corporation Limited (SHIC) , are the two unlisted companies floated in 2008, controlled by the Sahara group worth of Rs.2.75 lakh crore .

The two companies have raised about over Rs 24,000 crore from more than three crore investors by issuance of Optionally Fully Convertible Debentures (OFCDS) and mobilise lucrative investments promising, in some cases, to return three times their face value after 10 years, by passing Special resolution U/S 81(1A). An Optionally Fully Convertible Debenture is just a kind of Bond that can be converted into Equity Shares by the investors if they want to. So, this is a kind of hybrid market instrument that would come under the jurisdiction of the Securities and Exchanges Board of India (SEBI).

It is indicated that the intention of the company was to carry out infrastructural activities and the amount collected from the issue would be utilized in financing the completion of projects, namely, establishing/constructing the bridges, modernizing or setting up of airports, rail system or any other projects which might be allotted to the company from time to time.

One of the group company Sahara Prime City Limited intends to raise funds through listing of its shares filed Prospectus to SEBI. While processing the prospectus, SEBI received complaint from one Roshan Lal alleging that Sahara group was issuing Housing Bonds without complying with Rule/Regulation/Guideline by RBI/MCA/NHB, SEBI also received complaint from "Professional Group of Investors Protections" dated 25.12.2009 and 4.1.2010 which prompted SEBI to ascertain the correct factual position. Any company that wants to issue equity shares or Debentures or any other market related instrument to the public through the IPO Process has to file a Draft Red Herring Prospectus or DRHP to SEBI to tell them the details of the public issue, why they are doing so, their financial position etc. It is pretty standard procedure in India.

Thus, Sahara's case is all about OFCD and its investors. Here is the analysis of the issues pertaining to how events unfolded from 2008 to the issuance of non-bailable warrant to Sahara chief Subrato Roy.

Why did SEBI ask Sahara to refund the money?
SEBI asked Sahara to refund investors because it felt Sahara was raising money in violation of capital raising norms and certain sections of the Companies Act. SEBI found that under the garb of an OFCD the company was running an extensive parabanking activity without conforming to regulatory disclosures and investor protection norms pertaining to public issues.

What is Sahara's justification?

Sahara challenged SEBI's order saying the capital markets regulator did not have any jurisdiction over the group companies since they were not listed. The court dismissed Sahara's petition, also hauling it up for not complying with its orders.

What orders did Sahara not comply with?
The court directed Sahara to furnish details of the OFCDs it had issued including subscriptions and refunds within 10 days and submit these to SEBI. It also gave Sahara 90 days to deposit roughly Rs 24,000 Cr. SEBI which was given powers to freeze Sahara's accounts, attach properties etc. Sahara has re-

peatedly missed deadlines to comply with the Supreme Court's orders. It claims the total money due is only Rs. 5,200 Cr, as the balance amount has already been repaid. SEBI meanwhile, told the court that while it had begun the refund process; it couldn't trace many of Sahara's investors as details submitted by Sahara were not in the prescribed format, with addresses and other details missing in some cases.

What has the supreme court done today?

Since Sahara hasn't been able to deposit the Rs. 24,000 Cr amount with SEBI, the Supreme Court has asked Sahara India to submit a bank guarantee for Rs. 20,000 Crore before 2014,October 28th which is the date for the next hearing of the case. SEBI had earlier rejected Sahara's offer to secure the difference (between Rs 5,200 and 24,000) through immovable property entrusted with a bank trustee.

In March 2015, the court had directed two Sahara group companies — Sahara Real Estate and Sahara Housing — to return around Rs 24,000 crore with interest to nearly 3 crore investors through market regulator SEBI in Aug 2012. The firms were later allowed to pay up by February 2013. So, the total dues have now gone up to Rs 40,000 crore with the accrual of interest.

What lessons are learnt from Sahara case?

This case is about the corporate social irresponsibility towards investors and failure of corporate Governance mechanism of Sahara Group. It raises questions for both law makers and regulators.

Firstly, is India's regulatory framework equipped to consistently detect, halt and penalise such organised efforts? The court's order lays out how two Sahara group companies made "a pre-planned attempt" to "bypass the regulatory and administrative authority" of the Securities and Exchange Board of India (SEBI). The regulator should take steps to institutionalise the elements that led to this rare victory in court.

Secondly, the case highlights the issue of intelligence gathering and co-ordination among different financial sector regulators. The controversial money-raising operation followed a ban on Sahara's para-banking activities by the Reserve Bank of India in 2008. Sebi was, however, only alert to the operation two years after Sahara started, that too when one of the group companies came to the regulator for a "legal" public issue. The level of interaction between the different financial sector regulators is clearly insufficient. The only regular forum for interaction, the Financial Stability and Development Council (FSDC), concentrates on macro-prudential matters. More active co-ordination is needed at the grass-roots level.

Thirdly, Sahara's all or any of the estimated 30 million Sahara subscribers could be "fictitious". "there may be no real subscribers", or that fictitious subscribers are mixed in with the real ones. And yet, despite advertisements in papers and other strenuous efforts, the market regulator has not been able to find investors of more than Rs 10 crore. If the Sahara investors are fictitious, SEBI doesn't really have a role as it is mandated to deal with real investors, and some other agency should look into the case. And if Sahara's claim of having repaid its investors is true, Subrata Roy and the two directors shouldn't be in jail.

Fourthly, this case should serve as wake-up calls for authorities such as the Income Tax Department and the Enforcement Directorate to follow the money trail more closely. Different regulators and enforcement authorities should clearly act to avoid duplication and enable better deployment of resources. The government has formed a panel of retired and serving bureaucrats, called the Financial Sector Legislative Reforms Commission (FSLRC), to rewrite and harmonise some 60-odd financial sector laws.

Conclusion

Sahara's misdeeds are considered as an eye-opener in several respects about the uncertain dealings inside the corporate-houses and it brings in to being the need for protecting the interest of several millions of investors, who invested their hard earned money in such socially irresponsible corporations. SEBI proved to be effective machinery in tackling the case to an extent but still it has a limitation of regulating unlisted companies in India. The reasons for such scandals are several including lack of transparency, weak provisions, political nexus and above all, ignorance of investors. In the light of Sahara case, it is the responsibility of the government and its various agencies to protect the interests of investors and nation as well through putting in place necessary provisions in accordance with the changing requirement of market.

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