BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

(ADJUDICATION ORDER NO: ORDER/SBM/ASR/2022-23/17331-17336)

UNDER SECTION 15 - I OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995.

In respect of:

Sahara India Real Estate Corporation Limited
(PAN: AAJCS7265F)

Sahara Housing Investment Corporation Limited
(PAN: AAJCS4101J)

Shri. Subrata Roy Sahara
(PAN: ARKPS3189F)

Shri. Ashok Roy Choudhary
(PAN: ACKPC9547L)

Shri. Ravi Shanker Dubey
(PAN: ACYPD4274D)

Smt. Vandana Bharrgava
(PAN: AIHPB8701C)

In the matter of:

Issue of Optionally Fully Convertible Debentures (OFCDs) by

Sahara India Real Estate Corporation Ltd
and
Sahara Housing Investment Corporation Ltd.

FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**'), while examining the Draft Red Herring Prospectus (hereinafter referred to as '**DRHP'**) filed by

Sahara Prime City Limited (hereinafter referred to as '**SPCL'**) observed that two other companies forming part of the 'Sahara Group' namely, Sahara India Real Estate Corporation Limited, now known as Sahara Commodity Services Corporation Limited (hereinafter referred to as '**SIRECL' / 'Noticee no. 1**') and Sahara Housing Investment Corporation Limited (hereinafter referred to as '**SHICL'/ 'Noticee no. 2'**) had issued Optionally Fully Convertible Debentures (hereinafter referred to as '**OFCDs'**) during the period 2008 and 2009 which were allegedly in contravention of the provisions of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act**'), the erstwhile SEBI (Disclosure and Investor Protection) Guidelines, 2000 (hereinafter referred to as '**DIP Guidelines'**), SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 (hereinafter referred to as '**ICDR Regulations'**), SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as '**PFUTP Regulations'**) and also certain delegated provisions of the Companies Act, 1956 (hereinafter referred to as '**Companies Act'**).

2. Section 55A was inserted in the Companies Act by Amending Act 53 of 2000 w.e.f December 13, 2000. It reads thus-

"55A. Powers of Securities and Exchange Board of India---

The provisions contained in sections 55 to 58, 59 to 81 (including sections 68A, 77A and 80A) 108,109,110,112,113,116,117,118,119,120,121,122,206, 205A and 207, so far as they relate to issue and transfer of securities and non-payment of dividend shall-

(a) in case of listed public companies;

(b) in case of those public companies which intend to get their securities listed in any recognized stock exchanges in India, be administered by the Securities and Exchange Board of India; and

(c) in any other case, be administered by the Central Government

Explanation:- For removal of doubts, it is hereby declared that all powers relating to all other matters including the matters relating to prospectus, statement in lieu of prospectus, return of allotments, issue of shares and redemption of irredeemable *preference shares shall be exercised by the Central Government, Tribunal or the Registrar of Companies, as the case may be "*

3. It was observed that the aforementioned two companies i.e SIRECL and SHICL had raised sizable amounts of money from the public without conforming to the prudent disclosure requirements and other investor protection norms/requirement which govern the public issues. It is observed that while the aforesaid DRHP filed by SPCL was under examination, SEBI had also received complaints relating to the disclosures made in the DRHP of SPCL wherein it was alleged that SIRECL was issuing convertible bonds to the public throughout the country for the past several months, details of which were not disclosed in the DRHP of the IPO of SPCL.

4. It was observed by SEBI that the OFCDs were issued by two entities viz. **SIRECL/ Noticee no. 1** and **SHICL / Noticee no. 2** during the years 2008 and 2009. Thereafter, by letters dated May 12, 2010, May 21, 2010 and June 11, 2010, the concerned department of SEBI had directly sought the details / information pertaining to the OFCDs from SIRECL and SHICL. Since the details/information sought by SEBI were not furnished by the aforementioned two companies, vide an Order dated August 16, 2010, SEBI initiated an investigation in the matter of the issuances of the OFCDs by the two companies viz, SIRECL and SHICL, as SEBI had reasonable grounds to believe that the issuances of the OFCDs by SIRECL and SHICL were detrimental to the interest of the investors in the securities market and that the entities/intermediary or persons associated with the securities market may have violated the various provisions of law as mentioned in para 1 above. Thereafter, pursuant to the initiation of the investigations by SEBI, summons dated August 30, 2010 and September 23, 2010, under the provisions of section 11 C of the SEBI Act were issued by SEBI to the above entities for providing the following details/information in respect of the OFCD issuances made by SIRECL and SHICL:

   a. Details regarding filing of Prospectus/Red-herring Prospectus with ROC for issuance of OFCDs
   b. Copies of the application forms, Red-Herring Prospectus, Pamphlets, advertisements and other promotional materials circulated for issuance of OFCDs.
   c. Details regarding number of application forms circulated, inviting subscription for OFCDs;

d. Details regarding number of applications and subscription amount received for OFCDs;
e. Date of opening and closing of the subscription list for the said OFCDs;
f. Number and list of allotees for the said OFCDs and the number of OFCDs allotted and value of such allotment against each allotee‟s name;
g. Date of allotment of OFCDs;
h. Copies of the minutes of Board/committee meeting in which the resolution has been passed for allotment;
i. Copy of Form 2 (along with annexures) filed with ROC, if any, regarding issuance of OFCDs or equity shares arising out of conversion of such OFCDs
j. Copies of the Annual Reports filed with Registrar of Companies for the immediately preceding two financial years
k. Date of dispatch of debenture certificate etc.

5. It was observed by SEBI that despite providing sufficient opportunities to both SIRECL and SHICL over nearly six months beginning May, 2010, the aforementioned companies failed to provide the requested details/information. Further, it was observed that, as the above companies have failed to provide the necessary details/information, as required, SEBI collected certain relevant details from the filings made by the two companies with the respective RoCs, as available on the 'MCA 21 Portal' (maintained by MCA). From the examination of these records / material collected during the course of investigation, it was prima facie found by SEBI that both the entities viz. SIRECL and SHICL had collected sizable amounts of money from the public through the issue of OFCDs without making proper disclosures and also without conforming to the investor protection norms/guidelines governing the public issues. Therefore, in the said matter, WTM-SEBI had passed an *ex-parte* interim order dated November 24, 2010 restraining both SIRECL and SHICL and also their promoter/directors from issuing the prospectus, or any other document, or issue advertisement for soliciting money from the public for the issue of securities, in any manner whatsoever, either directly or indirectly, till further directions. Vide the said Order, the two entities viz. SIRECL and SHICL were also restrained from mobilizing the funds under the RHP dated March 13, 2008 and October 6, 2009, respectively, filed by the two entities i.e SIRECL and SHICL with the concerned RoCs, till further directions. The persons who are named as promoters and directors of SIRECL and SHICL, namely Mr Subrata Roy Sahara (hereinafter referred to as '**Noticee no. 3**'), Mr Ashok Roy Choudhary (hereinafter referred to as '**Noticee no. 4**'), Mr Ravi Shankar Dubey (hereinafter referred to as '**Noticee no. 5**') and Ms Vandana Bharrgava (hereinafter referred to as **'Noticee no. 6'**), were also prohibited from issuing the

prospectus, or any offer document, or issue advertisement for soliciting money from the public for issue of securities, in any manner whatsoever, either directly or indirectly, till further directions. In the context of the current proceedings, Noticee nos. 1 to 6 are also hereinafter collectively referred to as '**Noticees**'.

6. Aggrieved by the said interim order dated November 24, 2010, the above mentioned companies viz. SIRECL and SHICL challenged the interim order dated November 24, 2010 before the Lucknow Bench of the Hon'ble High Court of Judicature at Allahabad by filing a writ petition (WP). The said WP was admitted by the Hon'ble HC Allahabad and the operations of the interim order dated November 24, 2010 passed by WTM-SEBI was stayed along with directions to SEBI to proceed with the inquiry without taking any final decision in the matter. SEBI then challenged the order of the Hon'ble HC of Allahabad by filing a Special Leave Petition (SLP) before the Hon'ble Supreme Court. The Hon'ble SC in its Order dated January 04, 2011 observed that since the stakes involved in the matter are high (including the protection of investors' interest), SEBI would be entitled to call for any information which it deems fit, including the names of the investors who had invested in the OFCDs during the course of its inquiry. Hon'ble SC in its Order also concluded by directing that the matter may be expeditiously heard by the Hon'ble HC of Allahabad and disposed of accordingly.

7. Thereafter, the matter was heard by the Hon'ble High Court of Judicature at Allahabad, Lucknow Bench and the stay on the SEBI interim order was vacated by the Hon'ble HC vide its Order dated April 7, 2011. Subsequently, petitions were filed by SIRECL before the Hon'ble SC (Petition for Special leave to Appeal (Civil) No. 11023/2011) against the above mentioned Order dated April 7, 2011 of Hon'ble HC. SIRECL also filed another application before the Hon'ble HC of Judicature at Allahabad, Lucknow Bench to restore the stay order passed by it. It is noted that the above petitions filed by SIRECL were rejected by Hon'ble HC of Judicature at Allahabad (vide order dated April 29, 2011) and subsequently, the Hon'ble SC also dismissed the petition vide its Order dated May 12, 2011 wherein the Hon'ble SC directed SEBI, being the custodian of the investor's interest and as an expert body, to examine the issues including the nature of the OFCDs and the manner in which the investments are called for.

8. Therefore, in order to conclude the proceedings, in compliance with the directions of the Hon’ble SC, SEBI issued notice dated May 20, 2011 to the Noticees i.e SIRECL, SHICL and their promoter/directors named in the respective RHPs. Further, after providing reasonable opportunities of hearing in the matter, a final order dated June 23, 2011 was passed in the matter by WTM-SEBI against the Noticees (i.e SIRECL, SHICL and their promoter directors).

9. Vide the aforementioned Final Order passed by SEBI (Order dated June 23, 2011), WTM-SEBI directed both SIRECL and SHICL and their promoter/directors to forthwith refund the monies collected by them from the investors of the OFCDs along with interest @ 15% from the date of the receipt of the money by the two entities till the payment of the same to the investors. Both SIRECL and SHICL were also restrained from accessing the securities market for raising funds till such time the repayments are made by the two companies to the satisfaction of SEBI. The promoter/directors of SIRECL and SHICL were also restrained through the aforementioned Order of WTM-SEBI from associating themselves with any listed company and any public limited company which intends to raise money from the public till such time the aforesaid repayments are made by the two entities. Since the proceedings were pending before the Hon’ble SC, the final order dated June 23, 2011 passed by WTM-SEBI was placed before the Hon’ble SC. The pending SLPs were disposed of by the Hon’ble SC on July 15, 2011 with directions to SIRECL and SHICL to withdraw the WPs filed by them before the Hon’ble HC Allahabad and further directions were issued by Hon’ble SC to file appeal in the matter before the Hon’ble SAT and all the contentions raised by the parties were kept open. Thereafter, the two entities viz. SIRECL and SHICL and their promoter/directors i.e Noticees filed an appeal before the Hon’ble SAT challenging the final order dated June 23, 2011 passed by the WTM-SEBI.

10. It is noted that Hon’ble SAT vide its Orders dated October 18, 2011 (Appeals no. 131 & 132) dismissed the appeals filed by SIRECL and SHICL along with their promoter/directors and upheld the final order of WTM-SEBI dated June 23, 2011. Aggrieved by the said order of Hon’ble SAT, SIRECL filed C.A No. 9813 of 2011 and SHICL filed C.A No 9833 of 2011 before the Hon’ble SC under the provisions of section 15 Z of the SEBI Act. Pursuant to the above appeals, Hon’ble SC also disposed of the

Civil Appeals 9813 of 2011 and 9833 of 2011 vide Order dated August 31, 2012 wherein the appeals filed by the Noticees were dismissed and while disposing of the said appeals, Hon'ble SC had also concurred with the reasoning, findings and views expressed in WTM SEBI order dated June 23, 2011 and also the order dated October 18, 2011 passed by Hon'ble SAT in the said matter. Vide its Order dated August 31, 2012, the Hon'ble SC had also issued directions to the Noticees in modification of the directions issued by WTM SEBI (vide order dated June 23, 2011) and endorsed by the order dated October 18, 2011 passed by Hon'ble SAT.

11. Pursuant to the above developments, SEBI initiated Adjudication Proceedings against the Noticees (SIRECL, SHICL and their promoter/directors viz. Shri Subrata Roy Sahara (promoter) and directors of SIRECL and SHICL viz. Shri Ashok Roy Chaudhary, Shri Ravi Shanker Dubey and Ms Vandana Bharrgava under Chapter VI A of the SEBI Act for the following alleged violation of the provisions of law:

    a. Failure to comply with the provisions of Clauses 2.1.1., 2.1.4., 2.1.5., 2.2, 2.5, 2.8, 4.11, 4.14, 5.3.1., 5.6.2, 6.0 to 6.15, 8.8.1, 8.17, 10.0 to 10.6 and 10.9 of the DIP Guidelines read with Regulations 4(2), 5(1), 5(7), 6, 7, 16(1), 20(1), 25, 26, 36, 37, 46 and 57 of the ICDR Regulations to be adjudicated under the provisions of section 15 HB of the SEBI Act;
    b. Failure to comply with the provisions of Regulation 3 of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities market) Regulations, 2003 read with the provisions of Section 12 A of the SEBI Act, 1992 to be adjudicated under the provisions of section 15 HA of the SEBI Act;
    c. Failure to provide information sought vide summons dated August 30, 2010 and September 23, 2010 to be adjudicated upon under the provisions of Section 15A (a) of the SEBI Act, 1992;
    d. Failure to comply with the directions issued by SEBI vide WTM-SEBI Order dated June 23, 2011 to be adjudicated upon under the provisions of section 15 HB of the SEBI Act, 1992.

<u>APPOINTMENT OF ADJUDICATING OFFICER</u>

12. Vide communique dated November 30, 2012, Ms. Barnali Mukherjee was appointed as the Adjudicating Officer in the said matter. Subsequently, Shri D Ravikumar was appointed as the Adjudicating Officer in the matter. Pursuant to the transfer of Shri D. Ravikumar, the undersigned was appointed as the Adjudicating Officer vide Order dated June 22, 2015 to inquire into and adjudge under the provisions of section 15-I (1) of the

SEBI Act read with rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as '**Adjudication Rules'**) under the provisions of sections 15A(a), 15HA and 15HB of the SEBI Act for the alleged violation of the aforementioned provisions of law by the Noticees.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING:

13. Show Cause Notices reference nos. EAD-6/BM/VS/7670/2013, EAD-6/BM/VS/7672/2013, EAD-6/BM/VS/7674/2013, EAD-6/BM/VS/7675/2013, EAD-6/BM/VS/7676/2013 and EAD-6/BM/VS/7678/2013 dated March 28, 2013 (hereinafter referred to as '**SCNs**') were issued to the Noticees in the matter, *inter alia*, alleging the following:-

    a. *It was observed that Sahara Prime City Limited (hereinafter referred to as SPCL) had filed a Draft Red Herring Prospectus (hereinafter referred to as DRHP) with SEBI in respect of its proposed Initial Public Offer (hereinafter referred to as IPO), vide letter dated September 30, 2009 through its lead managers, Enam Securities Private Limited, J M Financial Consultants Private Limited, Edelweiss Capital Limited, IDBI Capital Market Services Limited and Daiwa Securities SMBC India Private Limited. While examining the same, SEBI received various complaints alleging that some companies in Sahara Group were issuing Optionally Fully Convertible Debentures (hereinafter referred to as OFCDs) in violation of the provisions of SEBI Act, Regulations and Guidelines made there-under and certain provisions of the Companies Act, 1956 (hereinafter referred to as Companies Act).*

    b. *It was observed that the Companies had failed to furnish various information/documents which were sought by SEBI, in its various letters during the preliminary examination of the matter. Except for providing the date of filing of RHP with the concerned ROCs, the companies did not provide any other information/document sought in the summons issued by SEBI within stipulated time. It was further observed that the details sought by SEBI in its letters and in the subsequent summons were pertaining to the issues of OFCDs in the background of receipt of various complaints alleging disclosure violations and* *violation of the applicable laws pertaining to the issue of securities to the public. However, there appeared to be reluctance in providing the information by the Companies, which were relevant and required for SEBI to examine the matter with respect to the delegated provisions of the Companies Act as well as the provisions of SEBI Act, Regulations and Guidelines made there-under. Hence, it is alleged that the Companies failed to furnish the desired information/ documents sought vide summons dated August 30, 2010 and September 23, 2010 before the investigation authority.*

c. *It is observed that the Companies raised money from the public without following the various procedures intended to protect the interest of investors, in respect of public issues, prescribed under the Companies Act, ICDR Regulation, SEBI Guidelines including the requirements for due diligence, disclosures, credit rating etc. The OFCDs issuance made by the Companies is public in nature and cast legal duty on them to list the same in the stock exchanges. It is therefore alleged that SIRECL has not complied with the provisions of Clauses 2.1.1., 2.1.4., 2.1.5., 2.2, 2.5, 2.8, 4.11, 4.14, 5.3.1., 5.6.2, 6.0 to 6.15, 8.8.1, 8.17, 10.0 to 10.6 and 10.9 of the DIP Guidelines and Regulations 4 (2), 5(1), 5(7), 6, 7, 16 (1), 20 (1), 25, 26, 36, 37, 46 and 57 of the ICDR Regulations. Similarly, it is alleged that SHICL has also not complied with the provisions of Regulations 4 (2), 5(1), 5(7), 6, 7, 16 (1), 20 (1), 25, 26, 36, 37, 46 and 57 of the ICDR Regulations. (Aforesaid Regulations are given at Annexure-C).*

d. *As seen from the pre-paras, these Companies used and employed in connection with the issue, purchase or sale of OFCDs, a manipulative and deceptive device in contravention of the provision of SEBI Act, Rules and Regulations made thereunder. Hon'ble Supreme Court has also observed that the OFCDs were issued in fraudulent manner. Thus, from the above it is alleged that the RHPs of the Companies contained untrue statements and mis-statements. Consequently, the said mis-statements in RHPs makes the Companies liable for issuance securities in a fraudulent manner under Regulation 3 of the PFUTP Regulations read with Section 12A of the SEBI Act.*

e. *It is therefore alleged that Companies have violated Regulation 3 of PFUTP Regulations read with Section 12A of SEBI Act* *f.* *While the investigation was in progress SEBI WTM vide an interim order-cum-show cause notice dated November 24, 2010, prima facie observed that the Companies had violated provisions of Sections 56 and 73 of the Companies Act; SIRECL has violated Clause 2.1.1., 2.1.4., 2.1.5., 2.2, 2.5, 2.8, 4.11, 4.14, 5.3.1., 5.6.2, 6.0 to 6.15, 8.8.1, 8.17, 10.0 to 10.6 and 10.9 of DIP Guidelines and SHICL had violated Regulations 4(2), 5(1), 5(7), 6, 7, 16(1), 20(1), 25, 26, 36, 37, 46 and 57 of ICDR Regulations.*

g. *On completion of the investigation SEBI in compliance with the order and direction of the Hon'ble Supreme Court passed an order dated June 23, 2011 and issued the following directions to the Companies and their promoters/ directors:*

h. *The Companies filed an appeal against the letter issued by SEBI on November 1, 2012 to furnish details of all the bank accounts and properties. The said letter of SEBI referred to the judgment of the Hon'ble Supreme Court dated August 31, 2012 and stated that the Companies have failed to furnish the documents to the Board within the stipulated time and thereby violated the direction of the Hon'ble Supreme Court. Hon'ble SAT vide order dated November 29, 2012 held that the appeal filed by the Companies were premature and was not, therefore maintainable. The Companies filed an appeal in Hon'ble Supreme Court against the order of the SAT. Hon'ble Supreme Court vide its order dated December 5, 2012 disposed of the appeal with the following directions:*

i. *It is observed that the Companies continue to violate the directions of SEBI order dated June 23, 2011 as modified by the Hon'ble Supreme Court. In view of the above it is alleged you have failed to comply with the directions issued by SEBI. Noncompliance of the directions issued by SEBI attracts monetary penalty under Section 15 HB of SEBI Act.*

j. *From the above it is alleged that the Companies, Shri. Subrata Roy Sahara, Shri. Ashok Roy Choudhary, Shri. Ravi Shanker Dubey and Shri. Vandana Bharrgava have violated provisions of SEBI Act, DIP Guidelines, ICDR Regulation and PFUTP Regulations by issuing/ offering OFCDs to public which was imperiled to the interest of the investors and detrimental to the interest of the securities market; solicited subscription from public throughout the country without adequately informing them about the risk involved in the instrument, the company* *or in the project; mis-stating in the RHP and mis-selling complex financial products to the general public without adequately informing them about the underlying risks; and defrauded the investors and denied them of all the mechanism designed to protect their interests. It is further alleged that the aforementioned entities failed to comply with the summons dated August 30, 2010 and September 23, 2010 and did not comply with the directions issued by SEBI vide order dated June 23, 2011.*

k. *The aforesaid alleged violations attract penalty under Section 15A(a), 15HA and 15HB of SEBI Act which are reproduced below:*

14. In response to the SCN issued to the Noticees, Shri. Ashok Roy Choudhary, Shri. Ravi Shanker Dubey, Smt. Vandana Bharrgava and Shri Subrata Roy Sahara vide separate letters dated April 26, 2013 and April 29, 2013 furnished their replies to the SCNs. The other two Noticees viz. SIRECL and SHICL also made submissions vide their letters dated April 26, 2013 and April 29, 2013 and further submissions were also made by them on November 27, 2013. Subsequently, personal hearings of the Noticees were conducted in the matter by the erstwhile Adjudicating Officer ('AO') on November 22, 2013, June 24, 2014, July 11, 2014 and July 25, 2014. Pursuant to the hearing, the Noticees made additional written submissions. Thereafter, pursuant to the appointment of the undersigned as the Adjudicating Officer in the matter, opportunity of hearing was provided to the Noticees on April 26, 2016 and the same was a partially heard matter on the said date of hearing (in view of the specific request made by the Noticees requesting for the hearing to be scheduled to another date). Subsequently, hearings were conducted in the matter on July 20, 2016 and August 29, 2016. Thereafter, Noticees desired to make additional written submissions in the matter. As no reply was received from the Noticees, vide reminder letter dated November 25, 2016, Noticees were advised to submit their reply in the matter. Subsequently, vide their letter dated December 02, 2016, Noticees filed their reply. In their submissions, it was observed that the Noticees persistently raised the issue of the Interim applications filed by them before the Hon'ble SC in the context of the instant adjudication proceeding and in view of the non-fulfillment of the requirements of Sub Rule (3) and Sub Rule (4) of the Adjudication

Rules during the course of the current proceeding. It was stated by the Noticees that they have filed Interim Applications no 122284/2013 in CA nos. 9813 and 9833 of 2011 nos. 88 and 89 of 2013 before the Hon'ble SC against the instant adjudication proceedings initiated against them by SEBI and the said matters were pending before the Hon'ble SC. In the said matter, it is noted that the Writ Petitions were filed by the Noticees before the Hon'ble SC against the initiation of the present adjudication proceedings against them vide SCN dated March 28, 2013.

15. Subsequently, vide letter dated September 05, 2017, Noticees were advised to make additional submissions in the matter. In response, only Mr Subrata Roy Sahara, responded vide his letter dated September 21, 2017 wherein he requested for time till October 10, 2017 to make the submissions in the matter. Thereafter, vide letter dated September 25, 2017, Mr Subrata Roy Sahara was advised to submit his reply by October 12, 2017. As the said matter involved examination of the replies of all the Noticees together and since it is a batch matter, the remaining Noticees were also required to submit their reply along with Mr Subrata Roy Sahara. However, it is observed that despite reminders, no reply was received from any of the Noticees.

16. From the submissions on record, the Noticees have inter alia mentioned the following:

    a) *It is submitted that the orders of SEBI dated 23rd June, 2011 and Securities Appellate Tribunal ("SAT") dated 18th October, 2011 have merged completely into the judgment and order of the Hon'ble Supreme Court dated 31st August, 2012 read with order dated 5th December, 2012. The present Show Cause Notice has been issued on 28th March, 2013 (viz. much after passing of both the Orders of the Hon'ble Supreme Court), when the said order dated 23rd June, 2011 of SEBI had ceased to exist. Hence, no question of non-compliance of SEBI's order dated 23rd June, 2011 arises as alleged in the Show Cause Notice or at all. In other words, SEBI's order dated 23rd June, 2011 has merged in Hon'ble Supreme Court's order dated 31st August, 2012 read with its order dated 5th December, 2012 and SEBI's order dated 23rd June, 2011 no longer operates and/or survives in the eyes of law, having merged in the order of the Hon'ble Supreme Court. Thus, the present Show Cause Notice issued on the* *basis of SEBI's order dated 23rd June, 2011 is not maintainable and sustainable in law.*

b) *The Noticee Companies rely upon two judgments in support of their case viz., (a) Gojer Brothers Pvt. Ltd. v. Shri Ratanlal [1975}1 SCR 394 para 11 and 22 (b) Kunhayammed & Ors. vs. State of Kerala & Anr. (AIR 2000 S.C. 2587)*

c) *SEBI's order dated 23rd June 2011 makes no reference of any alleged violation by the Noticee Companies of the PFUTP Regulations. The present Show Cause Notice seeks enforcement of SEBI's order dated 23rd June 2011, which is evident from paragraph 23 of the Show Cause Notice. Moreover, the summons dated 30th August, 2010 and 23rd September, 2010 also do not make any direct reference either to the PFUTP Regulations or its purported violations by the Noticee companies. Therefore, the present adjudication proceedings initiated by SEBI for alleged violation of PFUTP Regulations are beyond its own order dated 23rd June, 2011 and hence not maintainable and untenable. SEBI has initiated proceedings under the PFUTP Regulations directly by the said Show Cause Notice, which is clearly contrary to the provisions of SEBI Act, 1992 ("SEBI Act") PFUTP Regulations, principles of natural justice and related provisions of law.*

d) *It is submitted that in the present case, the requirements of Sub Rule (3) and Sub Rule (4) of Rule 4 have not been followed. There is no record/ document which communicate to the Noticees, the formation of the opinion, which is the mandatory requirement under Sub-rule (3) of the SEBI Rules. The fulfillment of requirement of Sub Rule (3) is a precursor / precondition to proceed with the proceedings at the stage of Sub Rule (4).*

e) *It is submitted that in the instant case, since the conditions precedent under the Rule 4(3) have not been complied with, the entire proceeding is bad in law and not maintainable. It is submitted that the Noticee Companies along with the directors and Shri Subrata Roy Sahara had filed an Appeal before the SAT in view of non-fulfillment of requirements of Sub Rule (3) and Sub Rule (4) of Rule 4 the SEBI Rules and consequent upon the order dated December 17,* *2013 passed by the SAT, the Noticee Companies along with the said individuals have filed necessary Interim Application (No.88 of 2013 and No.89 of 2013), which is pending before the Hon'ble Supreme Court of India.*

f) *It is thus respectfully submitted that in view of the pendency of the aforesaid interim applications before the Hon'ble Supreme Court, the present adjudication proceedings should be stayed and not proceeded further with. In any event, without prejudice and in the alternative, it is submitted that atleast till the pendency of the aforesaid interim application before the Hon'ble Supreme Court, judicial propriety demands that the present adjudication proceedings on the issue of purported PFUTP Regulations should be stayed and not proceeded further with.*

g) *In addition to the above, it is submitted that SEBI has failed to follow the necessary preconditions under the Act I Regulations before initiating the PFUTP proceedings. It is pertinent to note that the scheme of the PFUTP Regulations, particularly (Chapter III), clearly discloses that steps are required to be taken in the following sequence viz.*

   (i) *reasonable belief (Chairman / Board) that transactions in securities are dealt with in violation of PFUTP Regulations;*
   (ii) *appointment of Investigating Authority;*
   (iii) *submission of report by the Investigating Authority to the Board;*
   (iv) *consideration of report by the Board and satisfaction that there is violation of PFUTP Regulations;*
   (v) *giving an opportunity of a hearing to the person concerned;*
   (vi) *issuance of directions;*
   (vii) *taking such action as mentioned in Regulation 11 and 12.*

h) *It is submitted that no investigation has been ordered as mandated under Regulation 5, nor has the Investigating Authority submitted a report as mandated under Regulation 9, nor is there any consideration by the Board of such a report to come to the conclusion that there is violation of PFUTP Regulations.*

i) *The present proceedings seek to penalize the Noticee Companies for non-compliance of the order of SEBI dated 23rd June, 2011. As aforesaid, the order* *of SEBI has merged with the order of the Hon'ble Supreme Court and the same does not exist anymore. Hence, there is no question of its non-compliance.*

j) *Therefore, it is SEBI's own case that the proceedings before the Hon'ble Supreme Court cover the enforcement as well as penal proceedings. There cannot be two parallel proceedings seeking to penalise the Noticee Companies for the same alleged non-compliance. Therefore, the present proceedings ought not to be continued.*

k) *It is respectfully submitted that the initiation of the present adjudication proceedings in view of the pending proceedings before the Hon'ble Supreme Court, subjects the Noticee Companies to double jeopardy since the Noticee Companies are facing proceedings before the Hon'ble Supreme Court for non-compliance of the order dated 31st August :i012 (in which SEBI's order dated 23rct June 2011 is merged as explained herein) and the Noticee Companies are made to also face the present adjudication proceedings.*

l) *The Interim Applications (No.88 of 2013 and No.89 of 2013) filed by the Noticees is pending before the Hon'ble Supreme Court of India which inter alia has sought as follows viz. "be pleased to clarify whether the SCN dated 28th March 2013 issued by the Adjudicating Officer appointed by SEBI and consequent Adjudication Proceedings conducted by the Adjudication Officer are in implementation of the order of the Hon'ble Supreme Court dated 31st August 2012.*

m) *It is thus respectfully submitted that in 'View of the pendency of the aforesaid interim applications before the Hon'ble Supreme Court, the present adjudication proceedings should be stayed and not proceeded further with.*

n) *At the relevant time, the Noticee Companies bonafide believed that only the Ministry of Corporate Affairs (MCA) I Registrar of Companies (ROC) had jurisdiction in the matter and not SEBI. The bonafide belief of the Noticee Companies inter alia is based on the following which would clearly show that the Noticee Companies are not in any deliberate breach or not compliance of the summons issued or of the orders passed by SEBI:*

17. As already stated, it is observed that pursuant to the issuance of the SCN in the matter, the Noticees have preferred an appeal before the Hon'ble SC against the SCN initiating the present adjudication proceedings. It is observed from the submissions made by the Noticees that they were persistently contending about the appeals filed by them before the Hon'ble SC against the present proceedings and the SCN issued to them in this regard. The Noticees also specifically stated that the Adjudication Officer cannot proceed against them in the matter as the WPs filed by them are yet to be disposed of by the Hon'ble SC. The above contentions/ submissions were also reiterated by the authorized representatives of the Noticees during the course of the personal hearings that were conducted in the said matter.

18. In view of the above, upon seeking the factual position regarding the status of the WPs from the concerned department of SEBI, it was informed that in respect of the aforesaid adjudication proceedings initiated against the Noticees vide SCN dated March 28, 2013, the Noticees filed Appeal No. 206 of 2013 before the Hon'ble SAT. Subsequently, referring to a query raised by Hon'ble SAT as to whether it can proceed with the appeal in light of the Order of Hon'ble Supreme Court dated July 17, 2013, SIRECL and SHICL filed an Application dated December 21, 2013 before the Hon'ble Supreme Court in CA. No. 9813 and 9833 of 2011 seeking clarification as to whether the SCN dated March 28, 2013 issued to them in the context of the present Adjudication proceedings are in implementation of the Order of Hon'ble Supreme Court dated August 31, 2012. The concerned department has stated that the Noticees have filed an IA No: 122284/2013 dated December 21, 2013 and the said matters are pending and yet to be listed, as on date.

19. The factual position w.r.t. the WPs were also ascertained from the Noticees during the course of the proceedings. However, despite significant time being granted to them, the Noticees were not able to provide a concrete reply regarding the status of the WPs and reiterated their stand that the Adjudication proceedings cannot be proceeded against them in view of the writ petitions filed by the Noticees before the Hon'ble SC and also that the said matters are pending in the Hon'ble SC. Therefore, in view of the appeals filed by the Noticees before the Hon'ble SC, the Noticees were advised to make additional written submissions in the matter vide letter dated January 15, 2021. In

response, Noticees have vide their letter dated February 15, 2021 specifically requested for providing them with another opportunity of personal hearing in the matter. Therefore, in the interest of natural justice and due to the elapse of time from the last hearing date provided to the Noticees, the Noticees were provided with another opportunity of personal hearing on March 18, 2021. However, the Noticees failed to appear for the hearing on the stipulated date and instead, towards the end of the day on March 18, 2021 i.e the stipulated date of hearing, the authorized representatives on behalf of the Noticees sent an email wherein a request was made to adjourn the hearing and the reason cited was the matter which was pending before the Hon'ble Supreme Court i.e in respect of the WPs filed by the Noticees, as aforesaid. Thereafter, the personal hearing of the Noticees in the matter was rescheduled to April 14, 2021. However, the Noticees once again requested for the adjournment of the hearing in the matter due to the ongoing Covid pandemic.

20. Subsequently, vide letter dated June 09, 2021, the Noticees were again advised to provide the status of the appeals filed by them in the Hon'ble Supreme Court, which were repeatedly cited by them in their submissions made during the course of the proceedings. The Noticees failed to respond to the aforementioned letter. Thereafter, vide letter dated June 17, 2021, the Noticees were advised to appear for the personal hearing on June 29, 2021 and in the said letter, the Noticees were specifically advised to submit the status of the appeals pending before the Hon'ble SC. The Noticees vide their email dated June 26, 2021 requested for further adjournment of the personal hearing in the matter. Subsequently, SIRECL, SHICL and Mr. Subrata Roy Sahara, vide their email dated June 29, 2021, filed additional submission in the matter. It is noted that the remaining three Noticees did not make their submissions. The major submissions made by SIRECL, SHICL and Mr. Subrata Roy Sahara in their reply are given below:

> *"Sahara Housing Investment Corporation Limited Additional Written Submission*
>
> *Sahara India Real Estate Corporation Limited Additional Written Submission*
>
> *(14) The Securities Appellate Tribunal, Mumbai, while passing the final order in the matter of Appeal No. 131 of 2011, on 18th October, 2011, in the matter*

of Sahara India Real Estate corporation Limited and others vs Securities and Exchange Board of India and others had opined and observed as under:

Para 15 "Even the conduct of the RoC leaves much to be desired. We say so because when the RHP was presented to him, the fact that the company had a capital base of only ten lacs with no other assets or reserves and was a loss making company and was going to collect Rs. 20,000 Crores by private placement, should have alerted him and he should have made necessary queries in this regard. It is reasonable to assume that he knew that an offer/invitation made to fifty or more persons would make it a public issue and he ought to have enquired as to the number of persons to whom OFCDs were proposed to be offered and their particulars. The appellants tell us that no such queries were made.

Had he made such a query he would have known that the offer would be made to more than fifty persons which would have made the issue of OFCDs a public issue. In that event he would have had no option but to insist upon the company to make all the necessary disclosures required to be made in a public issue. As already observed, no such disclosure has been made.

Further, the RoC ignored the instruction contained in circular no. F.7/91-CL-V dated March 1, 1991 issued by the then Department of Company Affairs,

Government of India which were brought to our notice by the learned senior counsel for the appellants. The circular as such has not been placed before us but an extract from Volume 81, Company Cases (Statutes) at page 204 were the contents of the same have been referred to has been placed before us by Mr. Nariman.

Since the contents of the extract have not been disputed by any party, we did not think it necessary to ask the Government of India to produce a copy thereof.

As an administrative measure, the Government of India by this circular had directed that a prospectus would not be registered by the Registrar of Companies if Sebi had informed him that the contents of the prospectus contravened any law or rules. As per this circular, it was incumbent upon him to submit to Sebi a draft prospectus for scrutiny. On receipt of the draft, Sebi was required to scrutinise the disclosures made therein to see if it contained adequate information for the investors. Admittedly, this was not done and we are of the view that the RoC while registering the RHP with undue haste had acted in dereliction of his duty."

Brief Additional Submissions on behalf of Mr. Subrata Roy Sahara

In the show cause notice allegations have been made against SRS and penalties are sought to be levied on the alleged ground that SRS is a majority shareholder holding seventy 70% of capital in Sahara Housing India Corporation Limited ("SHICL") and Sahara India Real Estate Corporation Limited ("SIRECL"). On basis of majority shareholding as also he being named as a promoter in RHPs, it is alleged that SRS can be reasonably regarded as a person in accordance with whose directions or instructions the board of directors of the companies were accustomed to act and therefore SRS fall within the ambit of officer in default. It is further alleged that SRS is in position of control and have a power to direct management policies and appoint majority of directors of the board.

The shareholding of SRS has decreased over period of time and in fact at the time of issuance of the summons in 2010, his shareholding in SIRECL and SHICL was 30% and 0.47% respectively. The current shareholding of SRS in SIRECL and SHICL was 0.03% and 0.11% respectively. Further, he was not a director in either of the companies i.e. SHICL or SIRECL on the date of filing of RHPs. In the circumstances the allegations made against SRS are exfacie incorrect and it is submitted that the proceedings initiated against SRS is exfacie incorrect. SRS craves liberty to make further submissions at the time of hearing."

21. Thereafter, the hearing in the matter of the Noticees was conducted on July 27, 2021. The Authorised Representatives (ARs) on behalf of the Noticees, M/s DSK Legal attended the hearing on the stipulated date. Further, pursuant to the hearing, additional written submissions were made by the Noticees vide email dated August 14, 2021. The Noticees in their reply apart from making other submissions once again reiterated the following: *"It is thus respectfully submitted that in view of the pendency of the aforesaid interim applications before the Hon'ble Supreme Court, the present adjudication proceedings should be stayed and cannot be proceeded further with."*

22. As already stated, since the Noticees were continuously mentioning about the WPs filed by them before the Hon'ble SC in the context of the present adjudication proceeding in their various written replies / submission and the same was also reiterated by them during the course of the hearings, the factual status of the petition was obtained from the concerned department of SEBI i.e LAD NRO and vide communication dated June 8, 2021, the department has confirmed that the Advocate on record ('AoR') had mentioned that as per the records/orders which are disseminated on the website of the

Hon’ble SC, the said IAs referred to by the Noticees have not been listed till date. In this regard, the AoR has also advised that the onus is upon the Noticees to place on record any order of the Hon’ble SC, which, in any manner, prohibits the AO from continuing with the Adjudication Proceedings initiated against the Noticees. In this regard, the email dated March 14, 2022, received from the concerned department also mentioned that the AoR handling the matter had also inter alia suggested that “ ……. *In any event, the onus is upon the Applicant/Noticees to place on record any order of the Supreme Court that in any manner prohibits the AO, SEBI from proceeding further with the SCN dated March 28, 2013*”

23. As stated, in line with the above suggestion of the AoR, Noticees were once again advised to confirm the status of the WPs filed by them before the Hon’ble SC and the Noticees without providing the status of the WPs reiterated that the proceedings initiated by SEBI against them vide SCN dated March 28, 2013 may be kept in abeyance in view of the WPs filed by them in the matter.

<u>CONSIDERATION OF ISSUES, EVIDENCE AND FINDINGS:</u>

24. I have carefully perused the various submissions made by the Noticees, the allegations levelled against them in the SCN and also the material/documents available on record. I have also perused the orders of the Whole Time Member (WTM) - SEBI, Hon’ble Securities Appellate Tribunal and Hon’ble Supreme Court which were passed in the matter of the issuance of the OFCDs by SIRECL and SHICL. The issues that arise for consideration in the present case are dealt in the following paragraphs, one by one, and the findings/observations are recorded therein:

    A. **Delay in the proceedings**

    B. **Raising of funds by way of issuance of OFCDs by SIRECL and SHICL in 2008 and 2009 and consequent violation of the provisions of DIP Guidelines and ICDR Regulations thereof by the Noticees.**

    C. **Allegations pertaining to the violation of the SEBI Act and PFUTP Regulations in the matter of OFCD issuances made by the Noticees.**

D. Non-submission of the details / information by SIRECL and SHICL, which were sought from them by SEBI vide Summons dated August 30, 2010 and September 23, 2010.

E. Non-compliance with the SEBI order dated June 23, 2011 by the Noticees, as modified by the Orders dated August 31, 2012 and December 05, 2012 of the Hon'ble Supreme Court.

F. Role of the promoter/directors of SIRECL and SHICL viz. Shri. Subrata Roy Sahara / Noticee no. 3, Shri. Ashok Roy Choudhary / Noticee no. 4, Shri. Ravi Shanker Dubey / Noticee no. 5 and Shri. Vandana Bharrgava / Noticee no. 6 in the matter of the OFCDs issued by the above mentioned two companies.

25. Before moving forward, the relevant provisions of the SEBI Act, DIP Guidelines, ICDR Regulations and PFUTP Regulations and certain delegated provisions of the Companies Act, allegedly violated by the Noticees are mentioned below:-

<u>DIP Guidelines</u>

2.1 Filing of offer document

2.1.1 *No issuer company shall make any public issue of securities, unless a draft Prospectus has been filed with the Board through a Merchant Banker, at least 30 days prior to the filing of the Prospectus with the Registrar of Companies (ROC):*

2.1.4 Application for listing

No company shall make any public issue of securities unless it has made an application for listing of those securities in the stock exchange (s).

2.1.5 Issue of securities in dematerialised form

2.1.5.1.No company shall make public or rights issue or an offer for sale of securities, unless:

(a) the company enters into an agreement with a depository for dematerialisation of securities already issued or proposed to be issued to the public or existing shareholders; and

(b) the company gives an option to subscribers/ shareholders/ investors to receive the security certificates or hold securities in dematerialized form with a depository.

2.2. Initial Public Offerings by Unlisted Companies

2.5 Credit Rating for Debt Instruments

2.8 Means of Finance

No company shall make a public or rights issue of securities unless firm arrangements of finance through verifiable means towards 75% of the stated means of finance, excluding the amount to be raised through proposed Public/ Rights issue, have been made.

4.11 Lock in of Minimum Specified Promoters' Contribution in Public Issues

4.11.1In case of any issue of capital to the public the minimum promoters' contribution (as per clause 4.1, 4.2, 4.3 95(and) 4.4 96(Deleted)) shall be locked in for a period of 3 years.

4.11.2 The lock-in shall start from the date of allotment in the proposed public issue and the last date of the lock-in shall be reckoned as three years from the date of commencement of commercial production or the date of allotment in the public issue whichever is later.

4.14 Lock-in of pre-issue share capital of an unlisted company

5.3.1 Memorandum of Understanding (MOU)

5.6.2 The lead merchant banker shall,

i. while filing the draft offer document with the Board in terms of Clause 2.1, also file the draft offer document with the stock exchanges where the securities are proposed to be listed;

i-a while filing the copy of the red herring prospectus, prospectus or letter of offer, as the case may be, with the Board under clause 2.1.2A.2, also file the copy of the red herring prospectus, prospectus or letter of offer with the stock exchanges on which the securities to be offered in the fast track issue are proposed to be listed;

ii. make copies of the draft offer document available to the public, host the draft and final offer documents on the websites of the all the lead managers / syndicate members associated with the issue and also ensure that the contents of documents hosted on the websites are the same as that of their printed versions. Further, where the issuer company is complying with provisos to clause 6.3 or clause 6.39, as the case may be, the offer document of the immediately preceding public or rights issue shall also be displayed on the websites in a similar manner;

iii. obtain and furnish to the Board, an in-principle approval of the stock exchanges for listing of the securities within 15 days of filing of the draft offer document with the stock exchanges.

6.0 to 6.15: CONTENTS OF OFFER DOCUMENT

8.8.1 Public Issues

(a) Subscription list for public issues shall be kept open for at least 3 working days and not more than 10 working days.

(b) The public issue made by an infrastructure company, satisfying the requirements in Clause 2.4.1 (iii) of Chapter II may be kept open for a maximum period of 21 working days.

(c) The period of operation of subscription list of public issue shall be disclosed in the prospectus.

8.17 Requirement of Monitoring Agency

8.17.1 In case of issues exceeding Rs.500 crores, the issuer shall make arrangements for the use of proceeds of the issue to be monitored by one of the financial institutions.

8.17.2 (i) A monitoring report, as per the format specified in Schedule XIX, shall be filed by the monitoring agency with the issuer company, on a half yearly basis, till the proceeds of the issue have been entirely utilized.

(ii) The monitoring report together with the management's comments thereon shall be placed by the issuer company before its audit committee without delay.

10.0 to 10.6 and 10.9: GUIDELINES FOR ISSUE OF CONVERTIBLE DEBT INSTRUMENTS

<u>ICDR Regulations</u>

4. General conditions.

<u>(2) No issuer shall make a public issue or rights issue of specified securities:</u>

(a)if the issuer, any of its promoters, promoter group or directors or persons in control of the issuer are debarred from accessing the capital market by the Board;

(b)if any of the promoters, directors or persons in control of the issuer was or also is a promoter, director or person in control of any other company which is

debarred from accessing the capital market under any order or directions made by the Board;

(c)if the issue of convertible debt instruments is in the list of wilful defaulters published by the Reserve Bank of India or it is in default of payment of interest or repayment of principal amount in respect of debt instruments issued by it to the public, if any, for a period of more than six months

(d)unless it has made an application to one or more recognised stock exchanges for listing of specified securities on such stock exchanges and has chosen one of them as the designated stock exchange:

Provided that in case of an initial public offer, the issuer shall make an application for listing of the specified securities in at least one recognised stock exchange having nationwide trading terminals;

(e)unless it has entered into an agreement with a depository for dematerialisation of specified securities already issued or proposed to be issued;

(f)unless all existing partly paid-up equity shares of the issuer have either been fully paid up or forfeited;

(g)unless firm arrangements of finance through verifiable means towards seventy five per cent. of the stated means of finance, excluding the amount to be raised through the proposed public issue or rights issue or through existing identifiable internal accruals, have been made.

5. Appointment of merchant banker and other intermediaries.

(1) *The issuer shall appoint one or more merchant bankers, at least one of whom shall be a lead merchant banker and shall also appoint other intermediaries, in consultation with the lead merchant banker, to carry out the obligations relating to the issue.*

(7) *The issuer shall appoint a registrar which has connectivity with all the depositories:*

6. Filing of offer document.

(1) No issuer shall make,

(a)a public issue; or

(b)a rights issue, where the aggregate value of the specified securities offered is fifty lakh rupees or more,

unless a draft offer document, along with fees as specified in Schedule IV, has been filed with the Board through the lead merchant banker, at least thirty days prior to registering the prospectus, red herring prospectus or shelf prospectus with the Registrar of Companies or filing the letter of offer with the designated stock exchange, as the case may be.

(2) The Board may specify changes or issue observations, if any, on the draft offer document within thirty days from the later of the following dates:

(a)the date of receipt of the draft offer document under sub-regulation (1); or

(b)the date of receipt of satisfactory reply from the lead merchant bankers, where the Board has sought any clarification or additional information from them; or

(c)the date of receipt of clarification or information from any regulator or agency, where the Board has sought any clarification or information from such regulator or agency; or

(d)the date of receipt of a copy of in-principle approval letter issued by the recognised stock exchanges.

(3) If the Board specifies changes or issues observations on the draft offer document, the issuer and lead merchant banker shall carry out such changes in the draft offer document and comply with the observations issued by the Board before registering the prospectus, red-herring prospectus or shelf prospectus, as the case may be, with the Registrar of Companies or filing the letter of offer with the designated stock exchange.

(4) The issuer shall, simultaneously while registering the prospectus, red herring prospectus or shelf prospectus with the Registrar of Companies or filing the letter of offer with the designated stock exchange or before the opening of the issue, file a copy thereof with the Board through the lead merchant banker.

(5) The lead merchant banker shall, while filing the offer document with the Board in terms of sub-regulation (1) and sub-regulation (4),file a copy of such document with the recognised stock exchanges where the specified securities are proposed to be listed.

(6) The offer document filed with the Board under this regulation shall also be furnished to the Board in a soft copy in the manner specified in Schedule V.

7. In-principle approval from recognised stock exchanges.— *The issuer shall obtain in-principle approval from recognised stock exchanges as follows :*

(a) in case of an initial public offer, from all the recognised stock exchanges in which the issuer proposes to get its specified securities listed; and

(b) in case of a further public offer and rights issue:

(i) where the specified securities are listed only on recognised stock exchanges having nationwide trading terminals, from all such stock exchanges;

(ii) where the specified securities are not listed on any recognised stock exchange having nationwide trading terminals, from all the stock exchanges in which the specified securities of the issuer are proposed to be listed;

(iii) where the specified securities are listed on recognised stock exchanges having nationwide trading terminals as well as on the recognised stock

exchanges not having nationwide trading terminals, from all recognised stock exchanges having nationwide trading terminals."

Monitoring agency.

16.(1) *If the issue size, exceeds one hundred crore rupees, the issuer shall make arrangements for the use of proceeds of the issue to be monitored by a public financial institution or by one of the scheduled commercial banks named in the offer document as bankers of the issuer:*

Additional requirements for issue of convertible debt instruments.

20. (1) *In addition to other requirements laid down in these regulations, an issuer making a public issue or rights issue of convertible debt instruments shall comply with the following conditions:*

(a) it has obtained credit rating from one or more credit rating agencies;

(b) it has appointed one or more debenture trustees in accordance with the provisions of section 117B of the Companies Act, 1956 and Securities and Exchange Board of India (Debenture Trustees) Regulations, 1993;

(c) it has created debenture redemption reserve in accordance with the provisions of section 117C of the Companies Act, 1956;

(d)if the issuer proposes to create a charge or security on its assets in respect of secured convertible debt instruments, it shall ensure that:

> *(i) such assets are sufficient to discharge the principal amount at all times;*
>
> *(ii) such assets are free from any encumbrance;*
>
> *(iii) where security is already created on such assets in favour of financial institutions or banks or the issue of convertible debt instruments is proposed to be secured by creation of security on a leasehold land, the consent of such financial institution, bank or lessor for a second or paripassu charge has been obtained and submitted to the debenture trustee before the opening of the issue;*
>
> *(iv) the security/asset cover shall be arrived at after reduction of the liabilities having a first/prior charge, in case the convertible debt instruments are secured by a second or subsequent charge.*

Reference date.

25.*Unless otherwise provided in this Chapter, an issuer making a public issue shall satisfy the conditions of this Chapter as on the date of filing draft offer document with the Board and also as on the date of registering the offer document with the Registrar of Companies.*

26. *Conditions for initial public offer.*

Lock-in of specified securities held by promoters.

36. *In apublicissue,thespecifiedsecuritiesheldbypromotersshallbelocked-infortheperiod stipulated hereunder:*

(a)minimum promoters' contribution shall be locked-in for a period of three years from the date of commencement of commercial production or date of allotment in the public issue, whichever is later;

(b)promoters' holding in excess of minimum promoters' contribution shall be locked-in for a period of one year:

Provided that excess promoters' contribution as provided in proviso to clause (b) of regulation 34 shall not be subject to lock-in.

Lock-in of specified securities held by persons other than promoters.

37. *In case of an initial public offer, the entire pre-issue capital held by persons other than promoters shall be locked-in for a period of one year:*

Provided that nothing contained in this regulation shall apply to:

(a) equity shares allotted to employees under an employee stock option or employee stock purchase scheme of the issuer prior to the initial public offer, if the issuer has made full disclosures with respect to such options or scheme in accordance with Part A of Schedule VIII;

(*b) equity shares held by a venture capital fund or a foreign venture capital investor for a period of at least one year prior to the date of filing the draft prospectus with the Board*

46. Period of subscription.

(1) Except as otherwise provided in these regulations a public issue shall be kept open for at least three working days but not more than ten working days including the days for which the issue is kept open in case of revision in price band.

(2) In case the price band in a public issue made through the book building process is revised, the bidding (issue) period disclosed in the red herring prospectus shall be extended for a minimum period of three working days:

Provided that the total bidding period shall not exceed ten working days.

57. Manner of disclosures in the offer document.

(1) The offer document shall contain all material disclosures which are true and adequate so as to enable the applicants to take an informed investment decision.

(2) Without prejudice to the generality of sub-regulation (1):

(a) the red-herring prospectus, shelf prospectus and prospectus shall contain:

(i) the disclosures specified in Schedule II of the Companies Act, 1956; and

(ii) the disclosures specified in Part A of Schedule VIII, subject to the provisions of Parts B and C thereof.

(b) the letter of offer shall contain disclosures as specified in Part E of Schedule VIII.

PFUTP Regulations

3. Prohibition of certain dealings in securities

No person shall directly or indirectly—
(a) buy, sell or otherwise deal in securities in a fraudulent manner;
(b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made thereunder;
(c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;
(d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made thereunder.

SEBI Act

12A. Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control.

No person shall directly or indirectly—

(a) use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;

(b) employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognised stock exchange;

(c) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognised stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;

26. As already stated, SIRECL and SHICL have issued OFCDs to the investors, which have allegedly resulted in violation of the delegated provisions of the Companies Act and consequently, SIRECL, SHICL and their promoter/directors (i.e Noticees) were liable to comply with the provisions of SEBI Act, DIP Guidelines and the ICDR Regulations and listing requirements. It is alleged that Noticees failed to comply with these requirements. I will now proceed to deal with the specific observations/allegations levelled against the Noticees in the SCN dated March 28, 2013, the various submissions/contentions of the Noticees and record my findings and observations as under :

A. <u>Delay in the proceedings</u>

27. During the course of the proceedings and at the time of the personal hearings, the ARs on behalf of the Noticees mentioned about the delay in the proceedings. As already stated, SEBI while processing the DRHP filed by SPCL had observed that two other companies forming part of the 'Sahara group' viz. SIRECL and SHICL had issued the OFCDs during the years 2008 and 2009. As the OFCDs issued by the said two companies were allegedly in contravention of the provisions of the SEBI Act, DIP Guidelines, ICDR Regulations and other provisions of law, the relevant details/information about the OFCDs were sought by SEBI from the above mentioned two entities vide letters dated May 12, 2010, May 21, 2010 and June 11, 2010. Since the details/information sought were not received from the two entities, SEBI initiated a formal investigation into the matter on August 16, 2010 and the Investigation Authority ('IA') appointed by SEBI had also issued summons dated August 30, 2010 and September 23, 2010 seeking/directing SIRECL and SHICL to submit the details/information pertaining to the OFCDs. It was observed by SEBI that despite

providing sufficient opportunities to both SIRECL and SHICL over nearly six months beginning May, 2010, the two companies failed to provide the necessary details/information to SEBI w.r.t the OFCDs issued by them in the years 2008 and 2009. Thereafter, SEBI collected certain relevant details pertaining to the OFCDs issued by the two companies from the MCA portal. From the details obtained/collected by SEBI, it was observed that the two companies viz. SIRECL and SHICL had raised sizable amounts of money from the public without conforming to the investor protection norms and the investor protection guidelines/Regulations prescribed by SEBI governing the public issues.

28. Thereafter, SEBI, vide Order dated November 24, 2010 (interim order) and Order dated June 23, 2011 (final order) observed that the OFCDs issued by SIRECL and SHICL were, in fact, public issues and that these companies viz. SIRECL and SHICL were duty bound to comply with the applicable provisions of the SEBI Act, DIP Guidelines/ICDR Regulations and various other statutory requirements of law, including the applicable/delegated provisions of the Companies Act, 1956. It was observed by SEBI that the two entities viz. SIRECL and SHICL failed to comply with the aforementioned provisions of law. Vide the said two orders, certain other directions were also issued by SEBI to the Noticees. Aggrieved by the said Order dated November 24, 2010 and the final order dated June 23, 2011 passed by SEBI, the Noticees filed appeals before various fora viz. Hon'ble HC Allahabad, Hon'ble SAT and Hon'ble SC. It is noted that Hon'ble SAT and Hon'ble SC, vide orders dated October 18, 2011 and August 31, 2012 respectively, upheld the above orders of SEBI which were passed against the Noticees, including SIRECL and SHICL.

29. Further, Hon'ble SC, vide its judgment dated August 31, 2012 had also observed that the two companies viz. SIRECL and SHICL by way of Information Memorandum (IM) and RHP had willfully misrepresented that the OFCDs issued by them were in the nature of private placement and had induced more than 3 crore investors to subscribe in the OFCDs and therefore, the OFCDs were in the nature of public issue of securities.

30. Therefore, based on the aforesaid developments/observations, adjudication proceedings were initiated by SEBI against the Noticees vide communique dated November 30, 2012 and the SCN was issued to the Noticees in this regard on March

28, 2013. Therefore, in view of the above observations and in my assessment, the instant adjudication proceedings have been initiated against the Noticees within a reasonable period of time.

31. In the context of the instant proceeding, pursuant to the SCN issued to the Noticees, it is observed that multiple opportunities of hearing were granted to the Noticees in the said matter, details of which have already been discussed in the pre-paras of this order. Further, it is observed that opportunities of hearing granted to the Noticees had to be adjourned / postponed on multiple occasions as per the request made by the Noticees. For eg, on April 26, 2016, the matter was partly heard on account of the specific request of the Noticees and the hearing was adjourned to another date. During the course of hearing held on July 20, 2016, the matter was once again partly heard as per the requirement cited by the Noticees and the hearing in the matter was adjourned to another date i.e August 29, 2016. Further, the hearing granted to the Noticees on June 29, 2021 was also postponed in view of an email dated June 26, 2021 received from the Noticees wherein they cited various reasons for seeking adjournment, including the Writ Petitions (WPs) filed by them before the Hon'ble SC against the instant adjudication proceedings.

32. In the instant matter, it is also observed that the Noticees were advised to make their written submissions (post hearing) vide letter dated September 05, 2017. In this regard, it is noted that except for a reply received from one of the Noticees i.e Mr Subrata Roy Sahara, the other Noticees failed to respond to the aforementioned SEBI letter. It is observed that even the response received from Mr Subrata Roy Sahara, as mentioned above, post the hearing, was not complete and not on merits as he only sought for additional time till October 10, 2017 to make his submissions. Further, reminder sent to the Noticees in this regard also did not elicit any response. It is observed that SIRECL, SHICL and Mr Subrata Roy Sahara vide their email dated June 29, 2021 made additional submissions. However, the remaining three Noticees viz. Shri Ashok Roy Choudhary, Shri Ravi Shanker Dubey and Smt Vandana Bharrgava did not file their reply.

33. It is also observed that the Noticees have in their submissions (both oral and written) repeatedly mentioned about the WPs filed by them before the Hon'ble SC against the

present adjudication proceedings and also in respect of the SCN dated March 28, 2013 issued to them in the said proceeding. It is pertinently noted that the WPs filed by the Noticees in the instant matter was mentioned by the Noticees on a persistent basis during the course of the proceeding and the Noticees had time and again requested SEBI not to proceed further in the matter in view of the said WPs filed by them. The relevant observations made in this regard are also elaborately discussed in the preceding paras of this order. In this regard, the AoR handling the said matter on behalf of SEBI had inter alia suggested that " ……. *In any event, the onus is upon the the Applicant/Noticees to place on record any order of the Supreme Court that in any manner prohibits the AO, SEBI from proceeding further with the SCN dated March 28, 2013*"

34. It is on record that the Noticees have even in their latest submissions made to SEBI (pursuant to hearing dated August 21, 2021) mentioned that *"It is thus respectfully submitted that in view of the* pendency *of the aforesaid interim applications before the Hon'ble Supreme Court, the present adjudication proceedings should be stayed and cannot be proceeded further with."*

35. Therefore, in view of the above observations, the contentions of the Noticees during the course of the hearing mentioning about the delay in the proceeding etc is without any merit. The Noticees were not in a position to produce any evidence/document on record to show that their WPs have been heard by the Hon'ble SC and/or they were unable to produce any evidence to show that the WPs filed by them, as aforesaid, prohibits SEBI from proceeding further in the matter of the instant proceedings. Instead, the Noticees continuously mentioned about the WPs filed by them in the context of the current proceeding and even sought for adjournment of the hearing citing the above reason.

B. Allegations regarding raising of funds by way of issuance of OFCDs by SIRECL and SHICL in 2008 and 2009 and consequent violation of the provisions of the DIP Guidelines and ICDR Regulations thereof by the Noticees.

36. It is observed that SIRECL filed the RHP before the Registrar of Companies (RoC), Uttar Pradesh on March 13, 2008 under Section 60B of the Companies Act, which was

registered on March 18, 2008. Thereafter, in April 2008, SIRECL circulated the Information Memorandum (hereinafter referred to as '**IM'**) along with the application for subscribing to the OFCDs purportedly by way of private placement to the associated entities such as associated group companies, workers/ employees and other individuals associated/connected with the Sahara Group. It is observed that SIRECL floated the issue of the OFCDs under the category of Nirmaan Bond, Real Estate Bond and Abode Bond of different face value (varying from Rs. 5,000/- to Rs. 12,000/- and different maturity period varying from 48 months to 120 months) and collected an amount of Rs. 19,400.87 crores from April 25, 2008 to April 13, 2011. It is observed from the SCN that SIRECL had a total collection of Rs. 17,656.53 crores as on August 31, 2011, after meeting the demand for premature redemption. The aforementioned amount is observed to be collected from 221.07 lakh investors spanning across 3 years.

37. Similarly, SHICL also filed the RHP on October 6, 2009 under Section 60B of the Companies Act with the RoC, Mumbai, Maharashtra, which was registered on October 15, 2009. Thereafter, SHICL circulated the IM along with the application for subscribing to the OFCDs by way of private placement. It is observed that SHICL floated the issue of the OFCDs under the category of Housing Bond, Income Bond and Multiple Bond of different face value (varying from Rs. 5,000/- to Rs. 24,000/- and different maturity period (varying from 48 months to 180 months) and collected an amount of Rs. 6,380.50 crore during the period November 20, 2009 to April 13, 2011 (spanning around 2 years). It is seen from the SCN that SHICL had a total collection of Rs. 6,373.20 crore as on August 31, 2011, after meeting the demand for premature redemption. The aforementioned amount was observed to be collected from 75.08 lakh investors. The details of the issuance of OFCDs by SIRECL and SHICL are summarized and given in the table below:

SIRECL		**SHICL**	
Date of commencement of issue	25.4.2008	Date of commencement of issue	20.11.2009
Total amount collected till April 13, 2011	Rs. 19,400.87 crores	Total amount collected till April 13, 2011	Rs. 6,380.50 crores
Total			Rs. 25,781.37 crores

Less: premature redemption	Rs. 1,744.34 crores (11.78 lakh investors)		Less: premature redemption	Rs. 7.30 crores (5,306 investors)	
Total				Rs. 1,751.64 crores (11.78 lakh investors)	
Balance on August 31, 2011	Rs. 17,656.53 crores		Balance on August 31, 2011	Rs. 6,373.20 crores	
Total				Rs. 24,029.73 crores	
Total No. of Investors					
	Total till April 13, 2011 (in lakhs)	Balance as on August 31, 2011 (in lakh)		Total till April 13, 2011 (in lakhs)	Balance as on August 31, 2011 (in lakhs)
Abode Bonds	70.94	70.65	Income Bond	1.45	
Nirman Bond	25.44	14.12	Multiple Bond	30.46	
Real Estate Bond	136.47	136.3	Housing Bond	43.23	
Total	232.85	221.07	Total	75.14	
				Total till April 13,2011 (in lakhs)	Balance as on August 31, 2011 (in lakhs)
				307.99	**296.15**

38. It was observed that SIRECL had issued three types of bonds and further details regarding the three types of bonds issued by SIRECL is given below:-

a) Abode Bond – The bond had a face value of Rs. 5,000/- (for 5 bonds) with a tenure of 120 months, with a redemption value of Rs.15,530/-. The minimum application size was Rs. 5000/-. The said bond can be redeemed prematurely after 60 months. The holders may also exercise option for conversion of the bonds against the face value of each bond into one fully paid equity share of Rs. 10/- each at a premium of Rs. 990/- each, provided such option is exercised on completion of 119 months. The bond holder can transfer the bonds to any other person, subject to the terms and conditions and approval of the company.

b) Real Estate Bond – The applicants/investors may apply for a minimum of two bonds of Rs. 6000/- each by paying Rs. 200/- per month and additional bonds may be subscribed by paying additional Rs. 100/- per month for 60 months. Weekly, Monthly, Quarterly, Half-yearly and Yearly payments were also accepted in the same proportion. The bond had a face value of Rs. 12,000/- (for two bonds) and can be redeemed after 60 months for a value of Rs. 15,254/- (redemption value). Holders of the bonds may exercise option for conversion against the face value of each bond into ten fully paid equity shares of Rs. 10/- each at a premium of Rs. 590/- each, provided such option is exercised on completion of 59 months. The bond holder can transfer the bonds to any other person, subject to the terms and conditions and approval of the company.

c) Nirmaan Bond – Applicants/investors can apply for a minimum of five bonds of Rs. 1000/- each and in multiples of Rs. 1000/- thereafter. The bond has a face value of Rs. 5,000/- (for five bonds) with a tenure of 48 months. On completion of the term, the bonds can be redeemed for Rs. 7,728/-. The bonds can also be redeemed earlier on completion of 18 months. Holders of the bonds also have the option of conversion. The face value of each bond can be converted into two fully paid equity shares of Rs. 10/- each at a premium of Rs. 190/- each, provided such option is exercised on completion of 47 months. The bond holder can also transfer the bonds to any other person, subject to the terms and conditions and approval of the company.

39. Similarly, further details regarding the three types of bonds issued by SHICL is given below: -

a) Multiple Bond – Applicants may apply for a minimum of two bonds of Rs. 12000/- each by paying Rs. 200/- per month for 120 months and each additional bond may be subscribed by paying additional Rs. 100/- per month for 120 months. Payments can be made on weekly, monthly, quarterly, half-yearly and yearly basis. The tenure of the bond is 180 months. The holders may exercise option for conversion of fully paid up bonds against the face value of each bond into twelve (12) fully paid equity share of Rs. 10/- each at a premium of Rs. 990/- each, provided such option is exercised on completion of 179 months. The bonds can also be redeemed after 180 months. The bond holder also has an option of pre-mature redemption after completion of 120 months by giving 30 days' notice. If the bond holder has not completed payment of installments regularly for 120 months, it shall be termed 'partly paid' and in such case, the partly paid bond holder shall be paid interest in proportion of the principal amount standing to his credit till the time of redemption. The bond holder can transfer the bonds to any other person, subject to the terms and conditions and approval of the company.

b) Income Bond – Applicant may apply for a minimum of six bonds of Rs. 1000/- each and in multiples of Rs. 1000/- thereafter. The tenure of such bonds is 120 months. The bond holders shall be paid monthly interest on the bond amount as below: Tenure in months 120 Face value of 6 bonds (in Rs.) 6000 Monthly interest withdrawal amount for 120 months (in Rs.) 52.50 Redemption on completion of tenure (in Rs.) 6000 The holders of such bonds may exercise option for conversion of fully paid up bonds against the face value of each bond into one fully paid equity share of Rs. 10/- each at a premium of Rs. 990/- each, provided such option is exercised on completion of 119 months. The bond holder can transfer the bonds to any other person, subject to the terms and conditions and approval of the company.

c) Housing Bond – Applicants may apply for a minimum of five bonds of Rs. 1000/- each and in multiples of Rs. 1000/- thereafter. The tenure of the bond is 180 months. Holders of the bonds may exercise option for conversion of fully paid up bond against the face value of each bond into one fully paid equity share of Rs. 10/- each at a premium of Rs. 990/- each, provided such option is exercised on completion of a period of 179 months. The bond can also be redeemed on the request of the bond holder on completion of 180 months for Rs. 31,500/- when conversion option is not exercised and opt for partial withdrawal or monthly withdrawals, as provided therein. Pre-mature redemption of the bonds is also allowed on completion of 10 years (120 months), by giving 30 days' notice. The bond holders can also transfer the bonds to any other person, subject to the terms and conditions and approval of the company.

40. Now the issue which arises for consideration is whether the issuance of the OFCDs in the manner, as was done by the Sahara Companies i.e SIRECL and SHICL, was in

contravention of the various provisions of law laid down in this regard under the delegated provisions of the Companies Act r/w the ICDR Regulation and DIP Guidelines. Therefore, it is imperative to first establish that the issuance of OFCDs by SIRECL and SHICL was under the jurisdiction of SEBI. In this regard, the pertinent issue of jurisdiction of SEBI w.r.t the OFCDs issued by SIRECL and SHICL has already been addressed / settled in the Order of SEBI dated June 23, 2011, which has also been upheld by the Hon'ble SAT and Hon'ble Supreme Court vide their respective orders dated October 18, 2011 and August 31, 2012. As the issue of jurisdiction has been adequately settled by the orders of Hon'ble SAT and Hon'ble SC, I will be dealing with it in brief and will be referring to the said order of WTM-SEBI and the order of Hon'ble Supreme Court at the relevant places in order to establish the charges/allegations levelled against the Noticees, in this regard.

41. It is noted that the Optionally Fully Convertible Debentures (OFCDs) are defined as kind of debentures which can be converted into shares at the expiry of a certain period at a pre-determined price, if the debt holder wishes to do so. The OFCDs were in the nature of 'hybrids' and were covered by the definition of the term 'securities' as defined under the SEBI Act read with the SCRA. Debentures are classified as 'securities' under the SCRA and therefore, the OFCDs also are 'securities' as classified under the SCRA. In this regard, I note that WTM-SEBI in his order dated June 23, 2011 has observed the following:

> "*A succinct elucidation of what the test for a "security" under securities laws may be found in A Ramayia (XVII Ed. 2010 - Guide to the Companies Act – Page 100). The acid test is whether the scheme involves an investment of money in a common enterprise with profits to come solely from the efforts of others so that whenever an investor relinquishes control over her funds and submits their control to another for the purpose and hopeful expectation of deriving profits thereof, she is in fact investing her funds in a security. The test derived from the jurisprudence on securities laws in the United States of America is "whether the investment is made in a common enterprise which is premised upon the reasonable expectation of profits solely from the managerial or entrepreneurial efforts of others. Such test contains three elements: the*

investment of money; a common enterprise; and profits or returns solely derived from the efforts of others."

42. It is further observed that Hon'ble Gujarat High Court in the matter of Essar Steel Ltd. Vs. Gramercy Emerging Market Fund (2003 116 Comp Case 248 Guj), observed the following :

    "In order to determine whether a transaction involves a 'security, the transaction has to be examined to assess the motivations that would prompt a reasonable seller and buyer to enter into it. If the seller's purpose is to raise money for the general use of a business enterprise or to finance substantial investments and the buyer is interested primarily in the profit the note is expected to generate, the instrument is likely to be a 'security'."

43. With reference to the observations made above, it is seen that, in the instant matter, both SIRECL and SHICL had issued OFCDs to the general public and the investors purchasing the OFCDs have made an investment in such debentures. Both the Sahara Companies i.e SIRECL and SHICL are common enterprises, being public limited companies. The debenture holders themselves have no role to play in generating profits on their investment – and therefore, as such, the profits or returns are solely derived from the efforts of others. Therefore, it is amply evident that the OFCDs come well within the scope of the term 'securities' as defined in Section 2(h) of the SCRA.

44. As regards the question of public issue of securities and the underlying difference between private placement and public issue of securities, Hon'ble SAT vide its order dated July 19, 2004 in the matter of Toubro InfoTech and Industries Limited and another vs. Securities and Exchange Board of India, held the following-

    "Section 67 of the Companies Act gives an indication of the difference between private placement and public issue. Section 67(3) is clear and categorical. Section 67(3) reads as follows:

    "No offer or invitation shall be treated as made to the public by virtue of sub-section (1) or sub-section (2), as the case may be, if the offer or invitation can properly be regarded, in all the circumstances-

(a) as not being calculated to result, directly or indirectly, in the shares or debentures becoming available for subscription or purchase by persons other than those receiving the offer or invitation; or

(b) otherwise as being a domestic concern of the persons making and receiving the offer or invitation :"

The first proviso to section 67(3) inserted by the Companies (Amendment) Act, 2000 with effect from 13.12.2000 sets at rest the question by stating that if an invitation to subscription is made to 50 or more persons, it ceases to be a private placement. The first proviso reads as follows:

"Provided that nothing contained in this sub-section shall apply in a case where the offer or invitation to subscribe for shares or debentures is made to fifty persons or more:"

This proviso was not in force when the two debenture issues were made by the company. The first issue was on 1st of September 1999 and the second issue was on June 1, 2000. The allotments were completed by July 2000. Therefore, the proviso, which came into force on 13.12.2000 holding that any issue made to 50 or more persons will be deemed to be public issue, was not in force."

45. Thus, it is clear from the above judgment of Hon'ble SAT that any offer of securities made by a public company to more than 50 persons after December 13, 2000, is to be treated as a public issue under the provisions of the Companies Act. In the instant matter, the issuance of OFCDs by SIRECL and SHICL were done after December 2000 and the number of investors is much higher than the threshold limit of 50 persons (which is also mentioned in the Table at para 37 above). The number of investors in respect of the OFCD issuances made by SIRECL and SHICL were running into lakhs and the collection of the monies were made through thousands of agents employed by SIRECL and SHICL. Thus, by no stretch of imagination the issue of the OFCDs by the two companies can be termed as private placement. I find that both SIRECL and SHICL had issued the OFCDs to more than 50 persons/investors in the years 2008 and 2009. It is observed that SIRECL issued the OFCDs to 221.07 lakh investors and SHICL to 75.08

lakh investors. Therefore, it is evident that the OFCD issuances made by SIRECL and SHICL in 2008 and 2009, as discussed in the instant matter, were infact public issue of securities.

46. In this context, the Noticees have in their submissions referred to the Order of the Hon'ble High Court of Judicature at Bombay in the matter of Kalpana Bhandari vs. SEBI wherein it was mentioned that SEBI has claimed no jurisdiction even though the issue of securities was made to more than 50 persons. In this regard, I note that in the said matter, Sesa Industries Limited (issuer company) had made a preferential allotment of equity shares during the year 1993 to around 31,000 investors. I also note that the said allotment of securities had happened in the year 1993, which was much before the insertion of the proviso to Section 67(3) of the Companies Act. The relevant amendment to section 67 (3) of the Companies Act came into effect from December 13, 2000 wherein a proviso has been inserted to this sub-section stating that nothing contained in sub-section (3) of Section 67 shall apply in case where the offer or invitation to subscribe for shares or debentures is made to fifty persons or more. Therefore, in view of the above observations, the contentions of the Noticees citing the above judgment of the Hon'ble HC Bombay, as aforesaid, is baseless and without any merit.

47. Further, in the matter of an appeal filed by SIRECL before the Hon'ble SAT against the Order of WTM-SEBI dated June 23, 2011, Hon'ble SAT vide Order dated October 18, 2011 has held the following:

" Section 60B(1) is an enabling provision which enables a public company making an issue of securities to circulate information memorandum to the public before filing a prospectus. It is not mandatory to circulate such a memorandum but if a company chooses to do so, it has to be circulated to the public obviously for the purpose of assessing the demand and the price which the public would be willing to offer. In the instant case, the company has, admittedly, circulated an information memorandum. It is, thus, clear that it approached the public to raise ` 20,000 crores notwithstanding what it professed in the RHP and in the information memorandum. Not only in law but also on facts the issue is a public issue because the company has approached more than thirty million investors out of which more than 22.1 million have invested in the OFCDs and it has raised more than ` 19,400/- crores. In the process, the company claims to have

utilized the services of its staff in 2,900 branches/service centers in the country and availed the services of more than one million agents/representatives through whom the investors were approached. How can such an issue be described as one by way of private placement. For these reasons as well, we hold that the issue of OFCDs by the company was a public issue as it had approached the public."

48. It is also pertinent to note that Hon'ble SAT in the matter of Toubro Infotech and Industries Limited and another vs. SEBI, vide its Order dated July 19, 2004 had held that an invitation to subscription made to 50 or more persons cannot be considered as a private placement.

49. It is noted that in the Order dated June 23, 2011, WTM-SEBI has summarized his findings with respect to the OFCD issuances made by SIRECL and SHICL and also that the said OFCDs being public issues, as given below:

> *"1. The OFCDs in question here constitute an offer to the public as they have been made to over fifty persons.*
>
> *2. The manner and the features of the fund raising under the bond issues by the two Companies discussed above, suggest these issues are by no means 'private'. What seems evident is that the two Companies have been running a mass subscription solicitation from the public.*
>
> *3. The two Companies do not fall under the entities specified in the second proviso to Section 67(3) which is the only exemption granted to the 'Rule of 50', that defines offer to the public, under the Companies Act. I would therefore conclude that the OFCDs issued by the two Companies are public issues, without any ambiguity."*

50. Therefore, from the findings of the investigation and also from the observations made above, it is noted that:

a) OFCDs are hybrid instruments, and are 'debentures'.

b) The definition of 'securities' under Section 2(h) of the SCR Act is an inclusive one, and can accommodate a wide class of financial instruments. The OFCDs issued by SIRECL and SHICL fall well within this definition.

c) The issue of OFCDs by SIRECL and SHICL is public in nature, as they have been offered and issued to more than fifty persons, being covered under the first proviso to Section 67(3) of the Companies Act. The manner and the features of fund raising under the OFCDs issued by SIRECL and SHICL further show that they cannot be regarded to be of a domestic concern or that only invitees have accepted the offer.

d) Section 60B deals with the issue of information memorandum (IM) to the public alone. Therefore, the same cannot be used for raising capital through private placements as the said provision is exclusively designed for public book built issues. When a company files an information memorandum under Section 60B, it should apply for listing and therefore has to be treated as a listed public company for the purposes of Section 60B(9) of the Companies Act. Further, Section 60B has to be read together with all other applicable provisions of the Companies Act and cannot be adopted as a separate code by itself for raising funds, without due regard to the scheme and purpose of the Act itself. The same evidently has never been the intention of the Parliament. In the instant matter of the OFCD issuances by SIRECL and SHICL, both the companies had issued the IM pursuant to the RHPs filed by them with the RoCs.

e) SIRECL and SHICL, by raising money from the public, in violation of the legal framework applicable to them, have not complied with the elaborate investor protection measures specified under the DIP Guidelines & ICDR Regulations , which are required in the case of public issue of securities viz. filing of the draft offer document with SEBI, compliance with the eligibility requirements for making a public issue, requirement of minimum promoters' contribution and lock-in period, credit rating (as it is a debt issue), IPO Grading (which was mandatory at the relevant point of time), creation of debenture trust and appointment of Debenture Trustee, creation of debenture redemption reserve, appointment of monitoring agency, appointment of SEBI registered Merchant Banker and Registrar to issue, obtaining the in-principle approval for listing from the stock exchanges, adherence to the time limit prescribed for opening and closing of issue (in this case the OFCDs were kept open for years on end), post issue transparency, listing requirements/compliance, adherence to corporate governance norms etc. Further, the requirement of rigorous scrutiny carried out by SEBI Registered intermediaries on any public issue made by a public company have been subverted in the mobilization of huge sums of money from the public by SIRECL and SHICL.

51. Further, all public issues made by the companies are required to comply with the provisions of the ICDR Regulations [the ICDR Regulation was framed by SEBI under the SEBI Act in place of the DIP Guidelines], in terms of Regulation 3 thereof. Prior to the ICDR Regulations, such public issues by companies were governed by the DIP Guidelines. It is noted that SIRECL filed the RHP on March 13, 2008, when the DIP Guidelines were in force whereas, the RHP of SHICL was filed with ROC on October 6, 2009, after the ICDR Regulations came into force. As per Section 67(3) of the Companies Act, an offer to fifty or more persons is treated as a public issue. Such offerror / issuer of securities has to then comply with various statutory requirements, such as registering the prospectus with RoC before making the public issue (Section 60), making an application to list their securities to recognized stock exchanges (Section 73), etc. The concerned companies are also required to follow the other requirements specified in the SEBI Act and Guidelines/ICDR Regulations issued thereof (as per the declaration specified in Schedule II of the Act). Hence, once the issuer company decides to offer its securities to 50 or more persons, then the issue is an offer to public at large, and the company has to comply with the provisions prescribed in the ICDR Regulations/DIP Guidelines, including Regulation 26(4) of the ICDR Regulations. Regulation 26(4) of the ICDR Regulations mentions that an issuer shall not make an allotment pursuant to a public issue if the number of prospective allottees is less than 1000, to ensure there is sufficient liquidity in the scrip post listing. Similar provisions were also in existence (Clause 2.2.2A) of the erstwhile the DIP Guidelines. It is noted from the above that there is no inconsistency between the provisions of the Companies Act and the ICDR Regulations/DIP Guidelines and that the provisions of the ICDR Regulations/DIP Guidelines have to be read in conjunction with the applicable provisions of the Companies Act.

52. Further, in terms of the provisions of section 73 (2) of the Companies Act, as both SIRECL and SHICL have admittedly not made any applications for listing of their securities (OFCDs) to the stock exchanges, they become liable to forthwith refund the

amounts collected from their investors/subscribers pursuant to their RHP, along with interest payment, as warranted. In terms of section 73 of the Companies Act, any company not making a listing application should necessarily refund all the amounts collected in pursuance of the prospectus. Therefore, both SIRECL and SHICL have clearly violated the aforementioned provisions of law and were duty bound to refund the monies collected in pursuance of the RHP/prospectus.

53. From the above observations, it is amply clear that SHICL and SIRECL had issued the OFCDs to the public and were required to comply with the relevant delegated provisions of the Companies Act concerning the public issues r/w the SEBI Act and the Regulations and Guidelines framed by SEBI in this regard. It was observed that SHICL and SIRECL treated the OFCDs as debentures in the IM, RHP, application forms and also in their balance sheet. Finally, and importantly, in the said matter, the relevant observations/conclusions drawn by Hon'ble SC in its Order dated August 31, 2012 on the appeal filed by SIRECL and SHICL against the Order dated October 18, 2011 of Hon'ble SAT has put to rest the all the issues of regulatory jurisdiction in the matter of the OFCDs issued by the two entities wherein the following observations/conclusions drawn by Hon'ble SC are pertinent to note:-

> "*the OFCDs so issued were of the characteristics of shares and debentures and fall within the definition of "securities" defined under Section 2(h) of Securities Contract (Regulations) Act, 1956 (hereinafter referred to SCRA), which continue to remain as debentures till they are converted."*
>
> *……………………...*
>
> *"The above discussion will clearly indicate that OFCDs issued by Saharas were public issue of debentures, hence securities. Once there is an intention to issue shares or debentures to the public, it is/was obligatory to make an application to one or more recognized stock exchanges, prior to such issue. Registration of RHPs by the Office of the Registrar does not mean that the mandatory provisions of Sections 67(3), 73(1) and DIP Guidelines be not followed. Saharas could not have filed RHP or any prospectus with RoC, without submitting the same to SEBI under Clauses 1.4, 2.1.1. and 2.1.4 of DIP*

Guidelines. Unlisted companies like Saharas when made an offer of shares or debentures to fifty or more persons, it was mandatory to follow the legal requirements of listing their securities. Once the number forty nine is crossed, the proviso to Section 67(3) kicks in and it is an issue to the public, which attracts Section 73(1) and an application for listing becomes mandatory which fall under the administration of SEBI under Section 55A(1)(b) of the Companies Act."

54. Therefore, in view of the above observations/ discussions and the findings of the WTM-SEBI in his order dated June 23, 2011, which has been upheld by both Hon'ble SAT and Hon'ble Supreme Court vide their orders dated October 18, 2011 and August 31, 2012, as aforesaid, it is established that SHICL and SIRECL raised money through public issue of securities by issuing the OFCDs in the years 2008 and 2009 without following the various procedures intended to protect the interest of the investors, in respect of public issues, prescribed under the provisions of the Companies Act (delegated sections) r/w the SEBI Act, the provisions of the ICDR Regulations and SEBI Guidelines (DIP Guidelines), including the requirements for due diligence, disclosures, credit rating, appointment of monitoring agency, applying for listing etc, which are required in respect of the public issue of securities by the companies. As the OFCD issuances made by SHICL and SIRECL are in the nature of public issues, the aforesaid companies were legally required to list their securities on the recognized stock exchanges in terms of the DIP Guidelines and ICDR Regulations. It is on record that the two entities viz. SIRECL and SHICL had failed to list the securities (OFCDs) on the stock exchanges. Therefore, in view of the above observations, I conclude that SIRECL has failed to comply with the provisions of Clauses 2.1.1., 2.1.4., 2.1.5., 2.2, 2.5, 2.8, 4.11, 4.14, 5.3.1., 5.6.2, 6.0 to 6.15, 8.8.1, 8.17, 10.0 to 10.6 and 10.9 of the DIP Guidelines and Regulations 4 (2), 5(1), 5(7), 6, 7, 16 (1), 20 (1), 25, 26, 36, 37, 46 and 57 of the ICDR Regulations and SHICL has failed to comply with the provisions of Regulations 4 (2), 5(1), 5(7), 6, 7, 16 (1), 20 (1), 25, 26, 36, 37, 46 and 57 of the ICDR Regulations. In view of the above, I hold that both SIRECL and SHICL and their promoters/directors have violated the aforementioned provisions of the DIP Guidelines and ICDR Regulations in respect of the OFCDs issued by them during 2008 and 2009.

C. **Allegations pertaining to the violation of the provisions of SEBI Act and PFUTP Regulations by the Noticees (including SIRECL and SHICL) in the matter of the OFCDs issued by them in 2008 and 2009**

55. Once it is established that the issuance of the OFCDs by SIRECL and SHICL was in contravention of the various provisions of law, as discussed in the previous paragraphs, the next issue for consideration is whether such act of issuance of securities by SIRECL and SHICL was deliberate and detrimental to the interest of the investors and further, whether the investors were induced by the Noticees to subscribe to such securities, which had adversely affected their interests. As regards the charges/allegations of fraud which have been levelled against the Noticees during the course of the proceedings, the Noticees have vehemently contended that the relevant provisions of the SEBI Act and PFUTP Regulations have been invoked by SEBI only during the current adjudication proceedings and were not levelled against them in the proceedings before the WTM-SEBI (i.e under section 11(1), 11 B proceedings). The Noticees have contended that it is not the case of SEBI that in the Order dated June 23, 2011 of WTM-SEBI, the issuance of the OFCDs by SIRECL and SHICL were termed as fraudulent. The above contentions of the Noticees is without any merit. It is noted that the allegations/charges of the violation of the provisions of the PFUTP Regulations and SEBI Act (sections 12 A (a) to (c) of the SEBI Act) by the Noticees have arisen due to the fraudulent manner in which the OFCDs were issued by the two companies viz. SIRECL and SHICL and the same was also highlighted by both Hon'ble SAT and Hon'ble SC in their respective orders dated October 18, 2011 and August 31, 2012. It is observed that at the time of the issuance of the OFCDs, both the companies i.e SIRECL and SHICL had advertised to the investors through their IMs, that the issue was in the nature of private placement of securities and the same was proposed to be made to friends, associates, associated group companies etc. In this regard, it is pertinent to note that Hon'ble SC in its Order dated August 31, 2012 had observed that the OFCDs were issued to over 3 crore investors, effectively highlighting the fact that there was a willful / false representation on the part of the two companies viz. SIRECL and SHICL which were made in the IMs. Furthermore, the RHPs of SIRECL and SHICL in the matter of the OFCDs issued by the

two entities, which were registered with the ROCs, were not approved by SEBI. On the said basis, the Hon'ble SC in its Order dated August 31, 2012 held that "….. *Section 68 provides imprisonment for a term which may extend to five years, or with fine which may extend to one lakh rupees, or with both, for fraudulently inducing persons to invest money. In other words, either to offer transferable securities for sale to the public or to request the admission of the securities for trading on a regulated market without prospectus, or to offer transferable securities for sale to the public, by way of shares and debentures, in violation of the first proviso to Section 67 (3) may attract civil and criminal liability. Saharas, in this case, published RHPs with the approval of RoC, but did not get them approved by SEBI or their securities listed on recognized stock exchange*" .

56. Clearly, when the aforementioned companies viz. SIRECL and SHICL falsely represented that the OFCD issue was a private placement, they deprived the investors of the various measures of investor protection which were available to them as per law (available in case of public issue of securities), which includes the appointment of Debenture Trustee, creation of debenture redemption reserve, listing of securities, appointing the monitoring agency, requirement of rating by the rating agencies, making application for listing and post-listing compliances, including meeting the corporate governance norms etc. It is noted that the Noticees have clearly circumvented the above requirements available in respect of the public issue of securities by fraudulently representing that the OFCD issues made by them in 2008 and 2009 were in the nature of private placement and that the said issues were not proposed to be listed on any stock exchanges. Since the Hon'ble SC had observed that the OFCDs were issued in a fraudulent manner, the aforementioned provisions of the SEBI Act and PFUTP Regulations (in respect of fraudulent issue and dealing in securities) would be attracted for the purpose of the instant adjudication proceedings initiated against the Noticees under the provisions of section 15 HA of the SEBI Act.

57. In the instant matter, it is also relevant to note that both SIRECL and SHICL circulated the Information Memorandum (IM) to the prospective investors of the OFCDs, inter alia, mentioning in the annexure attached to the IM that " *If the number of interested parties to the issue exceeds fifty the company shall approach the Registrar of Companies to file a red herring prospectus as per section 67 (3) of the Companies Act, 1956".*

58. It is noted that SIRECL and SHICL filed the RHP before the concerned RoCs and it is further noted that the RHP was filed with the ROCs concerned by the two entities before circulating the aforesaid IM to the prospective investors. Further, it is important to note that the above information w.r.t the applicability of section 67 (3) of the Companies Act which was mentioned in the IMs was not disclosed by SIRECL and SHICL in the RHPs filed by them before the RoCs of appropriate jurisdiction. In terms of section 60 B of the Companies Act, 1956, the IM, if at all was to be circulated, should have been circulated prior to the filing of the RHP by the aforementioned two companies viz. SIRECL and SHICL. However, in the instant matter of the OFCDs issued by the two companies, it is relevant to note that the IM was circulated to the investors after registering the RHP with the ROCs. This itself shows the deceitful intent behind the Sahara Companies i.e SIRECL and SHICL to camouflage the true nature of the OFCDs and to falsely portray that it was a private placement of securities. Further, the IM and RHP carry the same obligations as are applicable in the case of a prospectus. Thus, both SIRECL and SHICL concealed vital facts pertaining to the applicability of section 67 (3) of the Companies Act from the RoCs as the RHP filed with them did not contain these vital facts/clauses whereas, the IMs which was circulated to the investors (after the RHPs were filed with RoC) pertinently mentioned these details. Thus, from the above observations, it is evident that SIRECL and SHICL had deliberate intentions to mislead/conceal from the authorities concerned including the ROC about the true nature of the said OFCDs issued by them.

59. From the RHP, it is observed that the cheques towards the OFCD subscription in respect of SIRECL and SHICL were collected in the name of M/s Sahara India, a partnership firm (group entity of the Sahara India group), and the founder and promoter of the said group is none other than Mr Subrata Roy Sahara. It is noted from Annexure 4 of the RHP that 'Sahara India' has been designated as the "arrangers of the private placement" and the prospectuses do not carry the above disclosures and infact only contained wrong declaration.

60. In the context of concealment of facts and misleading the authorities including ROC etc by SIRECL, it is pertinent to draw reference to the conclusions drawn by Hon'ble SAT in its Order dated October 18, 2011 (in the matter of an appeal filed by SIRECL and its

promoter directors before the Hon'ble SAT against the order of WTM-SEBI dated June 23, 2011). In this regard, Hon'ble SAT in its Order dated October 18, 2011 held that:

" ..We are unable to agree with the learned senior counsel and are of the view that the company has concealed more than what it has revealed in the RHP. It is true that the company had disclosed that it did not intend the proposed issue to be listed on any stock exchange(s) and that the issue consists of unsecured OFCDs with an option to the holders to convert the same into equity share of 10 each at a premium to be decided at the time of issue. The company had also disclosed that the issue was made on a private placement basis and that the OFCDs would be offered only to such persons to whom the information memorandum would be circulated. What it did not disclose was the fact that the information memorandum was being issued to more than thirty million persons inviting them to subscribe to the OFCDs and there lies the catch. As will be seen from the discussion that follows, any offer or invitation to subscribe to for shares or debentures if made to fifty persons or more shall be treated as a public issue and all provisions of law relating to public issues as discussed hereinafter shall apply. By stating that the issue was a private issue and that the company did not intend to get it listed on any stock exchange even when it was a public issue, it (the company) withheld from the investors/public all the necessary information that is required to be disclosed to them in a public issue. The RHP is bereft of any disclosures in this regard. The company from the very beginning knew that it was going to collect an amount of about ` 20,000 crores as its own capital and reserves as disclosed in the RHP were negligible and that it intended to issue the information memorandum to millions of investors. The fact that the invitation to subscribe to OFCDs was going to be made to more than fifty persons was carefully camouflaged in the RHP as a result whereof the RoC was misled. Had it been disclosed that the offer was being made to millions of investors, perhaps the RoC would not have registered the RHP and, in any case, he would have raised several queries in this regard and would not have treated the issue as one made on private placement basis. This concealment is, indeed, very significant and goes to the root of the controversy. Having got the RHP registered on March 18, 2008, the company circulated the information memorandum to the prospective investors in April 2008. The information memorandum, if at all was to be circulated, should have been circulated prior to the filing

of the RHP as is the requirement of section 60B of the Companies Act. It may be mentioned that the information memorandum and the RHP carry the same obligations as are applicable in the case of a prospectus. It was in the information memorandum that the company disclosed to the prospective investors that "if the number of interested parties to this issue exceeds fifty the company shall approach the Registrar of Companies to file a red herring prospectus as per section 67(3) of the Companies Act, 1956." We wonder why this statement was made in the annexure to the information memorandum when the RHP had already been registered in which no such disclosure had been made. The company always knew that the number of persons who would subscribe to the OFCDs would exceed fifty and that the issue would be public and yet it kept on harping both in its resolutions and also in its RHP that it was an issue on private placement basis and it was able to convince the RoC that it was a private issue. What is interesting to note is the fact that the parties subscribing to the OFCDs may exceed fifty was told only to the prospective investors and not to the RoC. Again, the company had stated in the RHP that there would be no restriction on the transfer of OFCDs but in the terms and conditions contained in the application form, the transfer was made subject to the approval of the company. Having withheld this condition from the RoC, much was sought to be made out of this condition to contend that OFCDs were not freely transferable and hence not securities. Not only did the company withhold material facts from the RoC, it also failed to furnish to its shareholders all material particulars of persons from whom capital was sought to be raised on private placement basis thereby depriving them from taking an informed decision in the matter. It is not enough to tell them that OFCDs would be offered to friends, associates, group companies, employees etc. Private placement is made to a handful of known persons whose number is less than fifty and who agree to offer money in any form on mutually agreed terms which are then approved by the shareholders in an extraordinary general meeting. As is clear from the resolution, the particulars of the persons are conspicuously absent. They had also been informed that OFCDs would be issued on private placement basis and that the company would not be approaching the public through advertisement. The fact that information memorandum was circulated to more than thirty million persons through ten lac agents and more than 2900 branch offices is nothing but advertisement to the public. This vital fact was withheld from all concerned. It is, therefore, evident that the intention *of the company and its promoters from the very beginning was not bonafide. In this view of the matter, we cannot but hold that the appellants concealed some very vital facts from the RoC and from its shareholders and also from the investors and we are satisfied that the disclosures made in the RHP were not true and fair."*

61. From the above conclusions drawn by Hon'ble SAT, it is amply clear that Hon'ble SAT has held that the Noticees withheld from the investors/public all necessary information that is required to be made in respect of a public issue of securities in so far as the issue of the OFCDs by SIRECL and SHICL were concerned. It was also held by Hon'ble SAT that the fact that the Noticees were making invitation to the public to subscribe to the OFCDs and was proceeding to make the allotment to more than 50 persons was carefully camouflaged in the RHP filed by them with the RoCs and as a result whereof the RoCs were misled. Thus, the contentions of the Noticees that in the said matter of the OFCDs, it was their bonafide belief that it was the RoC which had the necessary jurisdiction and not SEBI is baseless and without any merit as the RoCs were not given the factual picture about the number of investors in the RHP filed with the RoC whereas the IM issued to the investors (which was not made available with RoC) conveyed a better and more transparent picture about the OFCD issues.

62. The contention of the Noticees that the instant adjudication proceedings initiated against them for the alleged violation of the PFUTP Regulations is beyond the scope of the SEBI Order dated June 23, 2011 is once again without any merit. The instant Adjudication proceedings against the Noticees are independent of the findings of any other proceedings and SEBI, well within its jurisdiction, can make additional charges in a proceeding, if it deems fit. It is trite law that multiple proceedings and fresh set of violations /allegations can be initiated /levelled by SEBI against the entities for violation of various provisions of law based on new findings/developments that may emerge during the course of the investigations. As already stated, pursuant to the investigations and also on the basis of the observations/conclusions drawn by Hon'ble SAT and Hon'ble SC in their respective judgments in the said matter, which have already been discussed above, it emerged that the Noticees have employed fraudulent methods to mislead the investors and also the authorities concerned and induced the investors to

invest in the OFCDs issued by them during the period 2008 and 2009. Therefore, the above contentions of the Noticees are baseless and without any merit.

63. The argument put forth by the Noticees was that they were always under the bonafide impression that the issuance of OFCDs by SIRECL and SHICL was a private placement and that the OFCDs were not securities. The Noticees also contended that they were under the impression that the OFCDs were not required to be listed on any stock exchange and therefore, it was their belief that the same was not within the jurisdiction of SEBI. However, I find the above contentions of the Noticees to be absurd as there was ample evidence to establish on the basis of the circumstantial evidence arising from the manner in which the two entities i.e SIRECL and SHICL issued the OFCDs that there was always a deliberate intention to keep such issuance out of the purview of SEBI by making misleading declarations and statements in the RHP. Both SIRECL and SHICL very well knew that the OFCDs were proposed to be issued to more than 50 persons right from the beginning of the issues and the same is evident from the manner in which the two entities circulated the IM to large number of investors by utilizing their 2900 branches/service centers and also from the declaration contained in the IM therein w.r.t section 67 (3) of the Companies Act. It is however noted that both SIRECL and SHICL continuously mentioned that the OFCDs were proposed to be issued on private placement basis and they did not intend to list the securities on any stock exchanges. This was deliberately done by the Noticees to circumvent the various provisions/requirements of the investor protection measures applicable in case of the public issue of securities, which would have enabled the investors to take informed decision of investment in such issues. Further, by making such misleading and false statements/declarations/representations about the nature of OFCDs and falsely mentioning that it was a private placement of securities, the two entities viz. SIRECL and SHICL was also in a position to escape from the continuous regulatory attention of listing/post listing compliances, which were otherwise required in case of the public issue of securities.

64. In this regard, I would like to draw reference to the Order of Hon'ble SAT in the matter of SEBI vs. Price Waterhouse & Co. & others dated September 09, 2019, wherein

Hon’ble SAT held the following while defining the term ‘fraud’ in respect of the securities market:

> *“43. From the aforesaid decisions and on a reading of the provisions of Section 12A of the SEBI Act and Regulation 3 & 4 of PFUTP Regulations, it is apparently clear that the object of Section 12A & PFUTP Regulations is to curb “market manipulations”. The manipulative and deceptive devices must be in relation to “securities” and must be by a person “dealing in securities”. The Supreme Court in Kanaiyalal (supra) has expanded the term ‘person’ to include a non-intermediary culpable under the PFUTP Regulations as the front runner was found to be dealing with the securities. Further, the charge against the “tippee” was required to be proved under Regulation 3(a),(b),(c),(d) & 4(1) of the PFUTP Regulations. Further, the use of manipulative device was intended to deceive another person. The Supreme Court thus enlarged the scope of “fraud” under the PFUTP Regulations to cover an action or omission even without deceit if such act or omission had the effect of inducing another person to deal in securities. Thus, more than “reckless or careless”, “inducement” becomes more significant where ‘fraud’ is required to be proved. The Supreme Court held that mens rea is not an indispensable requirement and fraud can be inferred on a preponderance of probabilities. However, the inferential conclusion must be arrived at from the proven and admitted facts.*
>
> *44. From the aforesaid, it becomes apparently clear that Regulation 3 and 4 of PFUTP Regulations applies only on persons dealing in securities. The applicability can be extended to persons who are associated with the securities directly or indirectly. Admittedly, the appellants are not dealing in the securities either directly or indirectly. They are auditors of listed companies. In order to bring them culpable within the four corners of Section 12A and Regulation 3 and 4 of PFUTP Regulations, fraud has to be proved on the basis of evidence. The Supreme Court in Kanaiyalal’s case (supra) extended the applicability of the provisions of Regulation 3 and 4 of PFUTP Regulation on a “tippee” only when a charge against him was proved. In the instant case, there is no shred of evidence to show that the auditor / audit firm had fabricated or falsified or fudged*

the books of account of SCSL in collusion with the top management of the SCSL. Further, fraud cannot be proved only on alleged gross negligence, carelessness or recklessness as amounting to collusion and connivance on a preponderance of probabilities. The Supreme Court in Kanaiyalal's case (supra) has categorically held that the element of "inducement" must exist and should be proved before holding that a person is guilty of fraud. In the instance case, there is no finding that the appellants had induced someone and thereby played a fraud in the securities market. Assuming without admitting that the concept of preponderance of probabilities would also apply in the case of the appellants, still, it must be proved by cogent evidence that the appellants are guilty of "inducement". In the absence, of any evidence, the charge of fraud is not proved, nor the provisions of Regulation 3 and 4 of PFUTP Regulations applicable. 54 If there was gross negligence, recklessness in adhering to the AAS in the course of auditing the accounts of SCSL, it can and can only point out to professional negligence which would amount to a misconduct to be taken up only by ICAI."

65. In this context, I would also like to draw reference to the Order of Hon'ble Supreme Court in the matter of SEBI vs. Kanaiyalal Baldevbhai Patel (Civil Appeal No.2595 of 2013), wherein the following was held by the Hon'ble Supreme Court:

"8. A person can be said to have induced another person to act in a particular way or not to act in a particular way if on the basis of facts and statements made by the first person the second person commits an act or omits to perform any particular act. The test to determine whether the second person had been induced to act in the manner he did or not to act in the manner that he proposed, is whether but for the representation of the facts made by the first person, the latter would not have acted in the manner he did. This is also how the word inducement is understood in criminal law. The difference between inducement in criminal law and the wider meaning thereof as in the present case, is that to make inducement an offence the intention behind the representation or misrepresentation of facts must be dishonest whereas in the latter category of

cases like the present the element of dishonesty need not be present or proved and established to be present. In the latter category of cases, a mere inference, rather than proof, that the person induced would not have acted in the manner that he did but for the inducement is sufficient. No element of dishonesty or bad faith in the making of the inducement would be required.

9. While Regulation 3(a) of the 2003 Regulations prohibits a person to buy, sell or otherwise deal in securities in a fraudulent manner, Regulation 4 declares that no person shall indulge in a fraudulent or an unfair trade practice in securities. ub-regulation (2) of Regulation 4 enumerates different situations in which dealing in securities can be deemed to be a fraudulent or an unfair trade practice. Regulation 4 being without prejudice to the provisions of Regulation 3 of the 2003 Regulations would operate on its own without being circumscribed in any manner by what is contained in Regulation 3."

66. It is noted from the aforementioned orders of Hon'ble SAT and Hon'ble SC and the observations/conclusion drawn in the said two orders that one of the key element of fraudulent activity is inducement of the investor to invest in securities by concealing/omitting the relevant information from him. That the OFCDs issued by the two entities i.e SIRECL and SHICL were in the nature of public issue of securities and the Noticees have employed dubious methods to show that the OFCDs were private placement is amply covered in the Order dated August 31, 2012 passed by Hon'ble SC wherein Hon'ble SC held the following:

" ..79. Saharas have taken up the stand that they have only circulated the IM, by way of private placement, to their associates, group companies, workers/employees etc. Section 60B(1) , as I have already indicated, casts no obligation to issue an IM. It is open to a public company making an issue of securities to circulate the IM to public before filing a prospectus for assessing the demand and price which public would be willing to offer. If Saharas were going for a private placement, then I fail to see why they had elicited all those details through an IM, since Section 60B(1) deals with issue of IM to the public alone. But from Saharas' conduct and action, it is clear, that their intention was to issue securities to the public under the garb of private placement. RHPs issued by Saharas indicated that they did not intend the proposed issue of securities to be listed on a stock exchange, even though in reality the securities were issued to the public. Every company which intends to offer shares or

debentures to the public for subscription by way of a prospectus is legally obliged to make an application on a recognized stock exchange. Let us examine whether Saharas practiced what they have preached. First, they have breached the very statutory declaration prescribed in Part 1 of Schedule II. Statutory declaration reads as follows: "Declaration: That all the relevant provisions of the Companies Act, 1956, and the guidelines issued by the Government or the guidelines issued by the Securities and Exchange Board of India established under section 3 of the Securities and Exchange Board of India Act, 1992, as the case may be, have been complied with and no statement made in prospectus is contrary to the provisions of the Companies Act, 1956 or the Securities and Exchange Board of India Act, 1992 or rules made thereunder or guidelines issued, as the case may be.:

80. RHP issued by Saharas (SIRECL) contains not the declaration mentioned above, but states as follows: "All the relevant provision of the Companies Act, 1956 and the guidelines issued by the Government have been complied with and no statement made in the prospectus is contrary to the provisions of the Companies Act, 1956 and the Rules thereunder." In the Bond (OFCDs) of Saharas, there is a head "Declaration" which, inter alia, reads as follows: " I confirm that I am/applicant associated with Sahara India Group. I have been explained everything in the language known to me and I have given my full consent on terms and conditions mentioned above." Further, at the end of the page containing the terms and conditions of bond, the following is also given as a declaration, which reads as follows: "I have explained everything in the language known to the applicant/Representative of applicant and he/she has given his/her full consent on terms and conditions mentioned above. I, hereby further declare that all declaration made by the Bond Holder/Representative of Bond Holder and all the information/personal particulars given above by the Bond Holder/Representative of Bond Holder are correct and true to the best of my knowledge and belief. Signature of the Introducer."

81. I fail to see, if the investors were associated with Sahara Group, as declared, then where was the necessity of an Introducer and Introduction. If the offer was made only to persons associated, related or known to Sahara Group, then they could have furnished those details before the fact finding authorities. Further, in the IM, Saharas had stated that if the number of interested parties to the issue exceeds fifty they should approach the RoC to file RHPs as per Section 67(3) of the Companies Act, which clearly indicates that Saharas knew, by virtue of the first proviso to Section 67, if the number of persons exceeds fifty, then the same would be a public issue. Facts indicate that, through this dubious method, that SIRECL had approached more than thirty million investors, out of which 22.1 million have invested in the

OFCDs and it had raised nearly 20,000 crores, for which it had utilized the services of its staff in 2900 branches/service centers and utilized the services of more than one million agents/representatives. Court can, in such circumstances, lift the veil to examine the conduct and method adopted by Saharas to defeat the various provisions of the Companies Act, already discussed, read with the provisions of the SEBI Act.

82. I, in the above facts and circumstances, fully endorse the findings recorded by SEBI (WTM) and SAT that the placement of OFCDs by Saharas was nothing but issue of debentures to the public, resultantly, those securities should have been listed on a recognized stock exchange."

67. From the above conclusions of Hon'ble SC, it is amply clear that SIRECL and SHICL employed dubious methods to show that the OFCD issuances made by them in the years 2008 and 2009 were in the nature of private placement whereas, in reality, they were public issue of securities in terms of section 67 (3) of the Companies Act and they fall within the jurisdiction of SEBI in terms of the DIP Guidelines and ICDR Regulations. The pertinent question to contemplate is whether the Noticees had in any way induced the general investors to invest in the issuance of the OFCDs by concealing / omitting information and making mis-representations in this regard. In this context, upon examination of the RHP filed by the Sahara Companies i.e SIRECL and SHICL, it is noted that there were several false statements that were made by these companies in the RHP, which are given below:

   a) *The columns mentioning minimum subscription, declaration regarding refund under Section 73 (2)/(2A) of the Companies Act, opening/closing date, details regarding debenture trustee, declaration regarding utilisation of issue proceeds etc. state "Nil/Not applicable/ No listing is envisaged/as decided by the Board".*
   b) *Declaration specified in Part III, para 22 of Schedule II of the Companies Act has not been incorporated in the RHPs and none of the disclosure requirements specified by SEBI or the investors protection measures prescribed for public issues, under DIP Guidelines/ ICDR Regulations have been complied with.*

c) *RHP states that the companies are not intending to list their OFCDs in any stock exchange whereas under Section 73 of the Companies Act it requires every company making offer of shares or debentures to public to compulsorily apply for listing of such shares or debentures in any of the recognized stock exchange.*

68. Further, it is observed that the subscription towards the OFCDs was solicited by the two entities i.e SIRECL and SHICL from the general public throughout the country, without adequately informing them about the risks involved in the instruments (OFCDs), or the risks attached to the issuing companies or risks attached to the project for which the capital was being raised. The same amounts to mis-selling of the complex financial product to the general public, without adequately informing them about the underlying risks, to enable them to make an informed investment decision regarding their investments. By falsely portraying that the OFCD issues made by the companies were in the nature of private placement, both SIRECL and SHICL have deprived the investors of the various measures of investor protection which were available to them under the law (in case of public issue), including the appointment of the debenture trustee, creation of debenture redemption reserve, rating by credit rating agency, appointment of monitoring agency, listing of security etc. Therefore, from the above facts, it is clear that the two companies i.e SIRECL and SHICL, by making false and misleading statements in the RHP have indulged in mis-selling the product to the general public, without adequately informing them about the underlying risks and defrauded the investors and denied them of all the mechanisms designed to protect their interests.

69. In this context, it is pertinent to draw reference to the observations of WTM-SEBI in his Order dated June 23, 2011 wherein the following observations, *inter alia*, were made:

" 26.7. For the purpose of my own understanding, I had directed the Investigating Authority to do a snap verification of any four addresses from a randomly selected locality in Mumbai itself (as the Learned Counsel had submitted that complete addresses are given in respect of investors in urban areas). Out of four investors, the Investigating team tried to identify, even after strenuous efforts with the Post Office, two of them were simply not traceable. As to the two investors who were identified, both of them invested in the OFCDs, just because they were approached by the Agents in their locality. They had no prior association with the issuer or the

Sahara Group. Evidently, on the face of it, the OFCDs are subscribed to, not by persons belonging to the Sahara India Parivar as claimed, but by the public, and such subscriptions are solicited through the usual marketing efforts that are typically needed to canvass deposit business from the general public. Both of them had hardly any awareness of the convertibility in these instruments."

70. In the instant matter, it is noted that the two entities i.e SIRECL and SHICL elicited public demand for the OFCDs through the issue of IM under Section 60B of the Companies Act, which in fact was only meant for public issue of securities and which further required filing of the prospectus under Section 60B (9) of the Companies Act. It is noted that the two entities i.e SIRECL and SHICL did not come out with a final prospectus on the closing of the offer as required under Section 60B(9) and failed to register it with SEBI. Further, SIRECL and SHICL issued the OFCDs to investors beyond forty-nine persons which resulted in the issue of the OFCDs coming under the purview of public issue of securities and therefore, the OFCD issues attracted the relevant provisions of the SEBI Act and the Regulations/guidelines framed thereunder. It is also observed that since the issuance of the OFCDs was a public issue, the OFCDs were liable to be listed on a recognized stock exchange as required under the provisions of Section 73(1) of the Companies Act. However, both SIRECL and SHICL failed to comply with the aforementioned requirement.

71. It is seen that the manner in which the IM and RHP were issued by the two companies i.e SIRECL and SHICL were arbitrary and not in compliance with the required laws. There were deliberate omissions regarding the role of SEBI in such issuance of public securities. It is observed that in the bonds (OFCDs) issued by SIRECL and SHICL, under the head "Declaration", the following is inter alia mentioned:

> *"….I confirm that I am/applicant associated with Sahara India Group. I have been explained everything in the language known to me and I have given my full consent on terms and conditions mentioned above".*

Further, it is observed that the relation or association with the Sahara India Group seems to have been left vague in the above declaration. There is no evidence to show as to what such an association or relationship implies, or as to what are the qualifications set for a person to be defined as an associate or for being related to the

Group. In other words, when the two entities viz SIRECL and SHICL have represented that the OFCD issues were in the nature of private placement of securities and proposed to be allotted to persons/entities associated with the Sahara group, there is nothing on record to show the details of the relationship of the investors with the Sahara group.

72. Further, the IM of SIRECL, in Part II thereof, under the head "*Objects of the Issue and Authority therefor*" mentions the following:

> *"The present issue of the OFCD's has been authorized by the equity holders of the company in the Extra Ordinary General Meeting held on 3rd March, 2008. However, if the number of interested parties to this issue exceeds 50 the company shall approach the Registrar of Companies to file a Red Herring Prospectus as per Section 67(3) of the Companies Act, 1956"*

Clearly, from the above observations, the two companies i.e SIRECL and SHICL proceeded with the issue of OFCDs, fully aware of the fact that once they exceed the threshold of forty-nine investors, they come under the purview of Section 67(3) of the Companies Act, and that, their issues would be public issue of securities. In fact, the conclusions drawn by Hon'ble SC in its order dated August 31, 2012 specifically states that SIRECL had approached more than thirty million investors, out of which 22.1 million investors have invested in the OFCDs and it had raised nearly Rs 20,000 crores, for which SIRECL had utilized the services of its staff in 2900 branches/service centers and also utilized the services of more than one million agents/representatives. Therefore, from the above observations, SIRECL and SHICL were clearly aware of the fact, right from the beginning of the issue itself, that the number of investors who would be subscribing to the OFCDs would be more than forty-nine and therefore, they would come under the domain of SEBI as it would be a public issue of securities. In view of the above, the contentions of the Noticees that at the time of the issuance of OFCDs, they were under the bonafide belief that it was a private placement of instrument is without any merit and is set aside.

73. In this context, the Hon'ble SC in its order dated August 31, 2012 has dealt in detail with the issue of the OFCDs by the two entities i.e SIRECL and SHICL having employed

dubious tactics to intentionally avoid the regulatory and administrative authority of SEBI in relation to the issuance of the OFCDs and in this regard, the Hon'ble SC had held the following:

> *"111. Having considered the aforesaid contention advanced at the hands of the learned counsel for the SEBI, there can be no denial about the unilateral and arbitrary violation of the declaration referred to by the learned counsel representing the SEBI. It is also apparent, that in the declaration made by the two companies, they had clearly avoided references to the SEBI and accordingly circumvented adherence to the provisions of the SEBI Act, rules and guidelines. The appellant-companies have likewise avoided, the provisions of the Companies Act (which are under the administrative control of the SEBI), as is apparent from the deliberations recorded above. There is, therefore, merit in the contention advanced by the learned counsel representing SEBI. Even though it is not possible for one to record a clear finding, whether or not the declaration under reference was altered with a pre-planned intention to bypass the regulatory and administrative authority of SEBI, there can be no hesitation to recording, that it certainly seems so.*
>
> *………*
>
> *113. On considering the submission advanced at the hands of the learned counsel representing SEBI, as has been noticed in the foregoing paragraph, it is clear that an "information memorandum" must inevitably precede the issuance of a prospectus (including a RHP). One must agree with the contention of the learned counsel, that there was no justification whatsoever for circulating an "information memorandum" after SIRECL had already issued a RHP. The procedure adopted by the appellant-companies is obviously topsy turvy and contrary to the recognized norms in company affairs. All this makes the entire approach of the appellant-companies calculated and crafty. It is clearly apparent, that the appellant-companies had clearly taken upon themselves to tread a path different from the mandate of law delineated under the Companies Act. There can, therefore, be no doubt about the inferences*

drawn by the learned counsel representing the SEBI even in so far as the second perspective is concerned.

……..

115. There can therefore be no hesitation in accepting, that on all three perspectives raised at the behest of the SEBI, to demonstrate that there was a pre-planned attempt at the hands of the SIRECL and SHICL, to bypass the regulatory and administrative authority of the SEBI, does seem to be real. One can only hope, it is not so. But having so concluded, it is essential to express, that there may be no real subscribers for the OFCDs issued by the SIRECL or SHICL. Or alternatively, there may be an intermix of real and fictitious subscribers. The issue that would emerge in the aforesaid situation (which one can only hope, is untrue) would be, how the subscription amount collected, should be dealt with, specially when the impugned orders passed by the SEBI, SAT are to be affirmed. Even though I hope that all the subscribers are genuine, and so also, the subscription amount, it would be necessary to modify the operative part of the order issued by the SEBI which came to be endorsed by the SAT, so that the purpose of law is not only satisfied but is also enforced."

74. In the context of the OFCD issuances made by SIRECL and SHICL, it is pertinently observed that there was subtle resistance and reluctance on the part of the aforementioned entities to share the relevant details/ information regarding the OFCD issue with SEBI. This shows that the entities i.e SIRECL and SHICL were aware of the lapses on their part while issuing the OFCDs and sharing of the true/correct information would have resulted in raising suspicion on the genuineness and the bonafides of the two entities i.e SIRECL and SHICL and also the true nature of the issuances made by them i.e nature of the OFCDs. It was observed that SIRECL and SHICL were making every possible attempt to suppress the sharing of the factual information regarding the OFCDs from the concerned authorities, including SEBI and the same was also evident from the manner in which the Hon'ble Lucknow Bench of the High Court of Judicature at Allahabad had also rejected the application of SIRECL on November 29, 2011, because, the Hon'ble High Court was of the considered view, that the Sahara Companies had not approached the High Court with clean hands, and the intention of

the Companies were not bonafide. The relevant observations made by Hon'ble HC Allahabad while dismissing the application of SIRECL on November 29, 2011 held that: "5……..*A person, who comes to the court, is supposed to come with clean hands and bona fide intentions, and has to abide by the orders passed by the court, more so in a case where the parties' counsel agree for certain actions to be undertaken. If some assurance is given by any person to the Court, as has been done in the present case, and the said assurance / understanding is not honoured, the court would not come to his rescue. The application is, therefore, rejected*".

75. Further, in the matter of not sharing the factual details/information, the Hon'ble Supreme Court in its order dated August 31, 2012 had held on the issue of non-cooperation by the two companies i.e SIRECL and SHICL that "*This itself is sufficient to conclude, that the whole affair was doubtful, dubious and questionable. The consequence thereof, if correct, would be shocking".*

76. Therefore, from the observations contained in the pre-paragraphs, it is clear that both SIRECL and SHICL had employed dubious methods in connection with the issue, purchase or sale of OFCDs and also adopted a manipulative and deceptive device in contravention of the provisions of the SEBI Act, Regulations and Guidelines made thereunder, to induce the general public to invest in the OFCDs. As discussed above, this has also been confirmed by the Hon'ble Supreme Court in its order dated August 31, 2012, that the OFCDs were issued in a fraudulent manner and the Sahara Companies i.e SIRECL and SHICL were fully aware of the fact that the issue of the OFCDs by the two companies were not in the nature of private placement but were in fact public issue of securities. Therefore, from the foregoing, it is established beyond doubt that the IM/RHPs of the Companies i.e SIRECL and SHICL contained untrue statements and mis-statements which were deliberately mentioned in the RHPs by the Noticees to mislead / induce the investors into subscribing to the OFCDs. Therefore, I conclude that the two companies i.e SIRECL and SHICL and their promoter/directors have issued the OFCDs in a fraudulent manner in order to induce gullible investors to subscribe to such OFCDs, thereby violating the provisions of the Regulation 3(a), (b), (c) & (d) of the PFUTP Regulations read with Sections 12A (a), (b), & (c) of the SEBI

Act. In view of the above, I hold that SIRECL, SHICL and their promoters and directors have violated the provisions of Regulations 3(a), (b), (c) & (d) of the PFUTP Regulations read with Sections 12A (a), (b), & (c) of the SEBI Act.

D. Non-submission of the details/ information by SIRECL and SHICL, which were sought from them by SEBI vide Summons dated August 30, 2010 and September 23, 2010.

77. As already stated, one of the Sahara Group Company i.e Sahara Prime City Limited (SPCL) had filed a Draft Red Herring Prospectus with SEBI in respect of its proposed IPO, vide letter dated September 30, 2009. While examining the same, SEBI received various complaints alleging that SIRECL and SHICL were issuing OFCDs in violation of the provisions of the SEBI Act, Regulations and Guidelines made thereunder and also the violation of certain delegated provisions of the Companies Act. It is observed that SEBI, vide letter dated April 22, 2010, sought information from the concerned Merchant banker i.e Enam Securities Private Limited, Lead Manager to the proposed IPO of SPCL, on the OFCD issuances made by SIRECL and SHICL, including the details regarding:

   a) *the filing of RHP of the said companies with the concerned RoC*
   b) *date of opening and closing of the subscription list*
   c) *details regarding the number of application forms circulated after the filing of the RHP with RoC*
   d) *the number of applications received*
   e) *the number of allotees*
   f) *list of allottees*
   g) *the date of allotment*
   h) *date of dispatch of debenture certificates etc.*
   i) *copies of application forms, RHP, pamphlets and other promotional material circulated.*

78. Thereafter, SEBI, vide letters dated May 12, 2010 and May 21, 2010, directly sought the aforesaid information from the two entities i.e SIRECL and SHICL. The two entities vide their letters dated 19th May, 2010 and May 24, 2010, filed their reply but failed to provide the desired details/ information/documents. Thereafter, vide letter dated June 11, 2010, SIRECL and SHICL were advised by SEBI to provide the information by June 15, 2010,

as undertaken by them in their letters dated May 24, 2010 and May 26, 2010. Subsequently, SIRECL and SHICL, vide separate letters dated June 14 2010, without providing the required details, informed SEBI that they have sent their requests to certain Government Departments seeking clarifications as to the approach to be followed by them in the circumstances and further stated that on receipt of the clarifications from the concerned departments, they would send their reply within 10-12 working days. Subsequently, vide letters dated June 28, 2010, SIRECL and SHICL, instead of providing the required information as sought by SEBI, intimated that they had received a letter addressed to them from the office of the Hon'ble Minister of State (in-charge) for Corporate Affairs and Minority Affairs, Government of India stating that the subject matter was being examined by the Ministry under the relevant provisions of the Companies Act. It is noted that SIRECL and SHICL had not furnished any formal communication from the Ministry of Corporate Affairs nor did they furnish any such reference being made to SEBI. It appeared to SEBI from the reply of SIRECL and SHICL that there was obvious reluctance on the part of the entities to furnish the details/information sought by SEBI. It was observed that except for providing the date of filing of the RHP with the RoCs concerned, SIRECL and SHICL did not furnish any details. It is noted that SEBI was seeking the information pertaining to the OFCDs from SIRECL and SHICL since May 2010. However, the Noticees failed to submit the desired details/information sought by SEBI.

79. In view of the same, vide an Order dated August 16, 2010, SEBI initiated investigation in the matter of the issuance of the OFCDs by SIRECL and SHICL, as SEBI had reasonable grounds to believe that the issuance of the OFCDs by the two entities may be detrimental to the investors or the securities market and that any intermediary or persons associated with the securities market may have violated the provisions of the SEBI Act, the Regulations/guidelines made or directions issued by SEBI there under.

80. Thereafter, summons dated August 30, 2010 and September 23, 2010, under the provisions of Section 11C of the SEBI Act were issued by SEBI to the Sahara Companies i.e SIRECL and SHICL to provide the following information/details/documents in respect of their OFCD issuances and as per the summons, time limit of September 15, 2010 (in respect of summons dated August 30,

2010) and time limit of September 30, 2010 (w.r.t Summons dated September 23, 2010) were provided to the entities to submit the details/information / documents to the Investigating Authority – SEBI as under:

i. Details regarding filing of Prospectus/Red-herring Prospectus with ROC for issuance of OFCDs
ii. Copies of the application forms, Red-Herring Prospectus, Pamphlets, advertisements and other promotional materials circulated for issuance of OFCDs.
iii. Details regarding number of application forms circulated, inviting subscription for OFCDs;
iv. Details regarding number of applications and subscription amount received for OFCDs;
v. Date of opening and closing of the subscription list for the said OFCDs;
vi. Number and list of the allotees for the said OFCDs and the number of OFCDs allotted and value of such allotment against each allotee's name;
vii. Date of allotment of OFCDs;
viii. Copies of the minutes of Board/committee meeting in which the resolution has been passed for allotment;
ix. Copy of Form 2 (along with annexures) filed with ROC, if any, regarding issuance of OFCDs or equity shares arising out of conversion of such OFCDs
x. Copies of the Annual Reports filed with Registrar of Companies for the immediately preceding two financial years
xi. Date of dispatch of debenture certificate etc.

81. The Noticees have however contended that the summons issued to them did not contain any specific time limit and further contended that the SEBI Act also does not prescribe any time limit within which the details/information has to be supplied/submitted etc during the investigation process. The above contentions of the Noticees are baseless

and without any merit. It is noted that the aforementioned summonses clearly prescribed the time limit within which the Noticees were required to submit the details/information/documents sought by the Investigating Authority (IA). Further, although the SEBI Act does not prescribe any time limit within which the information/details sought through the summons has to furnished, it has to be understood that the time limit is prescribed by the Investigating Authority based on the exigencies, importance and requirements of the case that is being investigated. In the instant matter, it is observed that substantial details/information/documents (mentioned above) were sought from the Sahara Companies viz. SIRECL and SHICL by SEBI vide various correspondences, since May, 2010. However, as already stated, SIRECL and SHICL failed to provide the aforesaid information as required by SEBI. It is noted that vide letters dated September 13, 2010 and September 30, 2010, SIRECL and SHICL acknowledged the receipt of the summons dated August 30, 2010 and September 23, 2010 and, *inter alia*, submitted that - "*since Companies are not listed and neither intends to get their securities listed, they were not to be administered by SEBI. As the OFCDs were offered on a private placement basis to a select class of persons, it is not a public issue and therefore does not attract Regulation 3 or 6 of the ICDR Regulations. It further stated that since the OFCDs are convertible securities, the Securities and Exchange Board of India (Issue and Listing of Debt Securities) Regulations, 2008 is also not applicable.* "

82. From the above, it can be clearly seen that Noticees were continuously adopting a reluctant attitude in sharing the details/information sought by SEBI. It is noted that the above details sought from the two entities by the IA of SEBI through the summons dated August 30, 2010 and September 23, 2010 were important to ascertain whether the issue of the OFCDs by the two entities are public or not. Some of the details so sought from the two companies, are the details of number of application forms circulated, application forms received, amount of subscription number, list of the allottees in the OFCDs, number of OFCDs allotted, value of allotment, date of allotment, date of dispatch of the debenture certificate etc. In respect of such details, SIRECL and SHICL have, vide their letters dated September 30, 2010, claimed that they do not have the complete information. It is noted that the above details sought from SIRECL and SHICL through

the aforementioned summons were basic details/information about the OFCD issuances made by the two entities and it is rather perplexing to note that the two entities could not provide the basic details/information about the OFCDs to SEBI. Though, the companies have stated that the issue of OFCDs were made on private placement to a select group, they could not even provide any details of the group despite the fact that SEBI issued the summons seeking such details/information from them. Thus, it is clear that the entities i.e SIRECL and SHICL had deceitful intentions to hide the important information/details sought from them by SEBI through the summons and the reluctant stand has been taken by them throughout the investigations in order to escape from the regulatory attention as by furnishing the required details/information, they would be under obligation to comply with the requirements of the ICDR Regulations and the DIP Guidelines of SEBI as the provisions of section 67(3) of the Companies Act have been violated by the two entities w.r.t their OFCD issuances.

83. It is noted that except for providing the date of filing of the RHP with the concerned ROCs, the entities did not provide any other information/documents sought by the Investigating Authority of SEBI through the summons dated August 30, 2010 and September 23, 2010 within the stipulated time period mentioned in the summons. From the Order of WTM-SEBI dated November 24, 2010, it is pertinent to note that, on November 3, 2010, the Chief Financial Officer (CFO) of the Sahara Group, Mr D J Bagchi, was also impressed about the need to fully and accurately furnish the information to SEBI at the earliest. However, it was observed from the order of WTM-SEBI dated November 24, 2010 that the CFO did not give any specific commitment about furnishing the information to SEBI. This itself shows the intractable attitude on the part of the Noticees of delaying/denying the submission of the information sought by SEBI.

84. In the context of the non-submission of the details/information/documents sought through the summons dated August 30, 2010 and September 23, 2020 by the Noticees, it is pertinently observed that the Noticees in order to substantiate their argument/submissions and in order to show that they were actually interested in complying with the summons attached copies of the various legal opinions (which were earlier submitted by them to SEBI before the initiation of the investigation). It is observed

that the said legal opinions were submitted by the Noticees prior to the initiation of the investigation by SEBI and in the context of the information/details sought by SEBI on the OFCD issuances prior to the initiation of the investigation. Further, in response to the summons, the Noticees have stated that the issue of the OFCDs have not yet closed and therefore, the details/information sought by the IA of SEBI were not available with them especially w.r.t the details/information sought by SEBI under item nos. 3,4,6,7,8 and 11 through the aforementioned summons. Further, the Noticees in their reply to the summons also mentioned the following-

A. To await clarification from the MCA pursuant to their representation dated May 31,2010 or

B. Advised SEBI to write to MCA directly and seek their views on the jurisdiction or

C. To seek the required details/information about the OFCDs directly from MCA and the concerned RoCs

D. To withdraw the summons issued to them in the matter as according to them the OFCDs were beyond the jurisdiction of SEBI

85. It is evident from the above reply of the Noticees that they were adopting a tough stand in the matter of submitting the relevant details/information sought by SEBI right from the moment SEBI started raising queries on the OFCD issues and the Noticees showed no inclination to furnish the details/information to SEBI despite the issuance of summons to them. It is observed that the summons dated August 30, 2010 and September 23, 2010 issued to the Noticees had clearly stated that in the event of the entities failing to produce the books, documents, details, as required, SEBI will initiate adjudication proceedings against them wherein a penalty of one lakh rupees for each day during which such failure continues, or one crore rupees, whichever is less, as provided under section 15 A of the SEBI Act would be levied on them for their default. Further, it was also mentioned that criminal prosecution shall also be launched against the entities for their failure to comply with the summons under the provisions of section 11 C (6) of the SEBI Act.

86. It is noted that the details sought by SEBI in its various letters (prior to initiation of investigation) and also in the subsequent summons issued to the Noticees were very important and were pertaining to the issue of OFCDs issued by SIRECL and SHICL and in the background of the receipt of various complaints alleging disclosure violations and violation of the applicable laws pertaining to the issue of securities to the public by the entities. However, as already stated, there appeared to be subtle resistance and reluctance on the part of the Noticees in providing the details / information to SEBI. The Noticees, instead of submitting the desired details/information were continuously questioning the jurisdiction of SEBI in seeking such details, which according to them were beyond the jurisdictional scope and purview of SEBI. The details/information sought by SEBI from the Noticees were very relevant and required by SEBI to examine the matter on the issuance of the OFCDs in the context of the delegated provisions of the Companies Act read with the provisions of the SEBI Act, Regulations and Guidelines made there-under. However, it is on record that Noticees have failed to submit the details /information. Hence, it is alleged that SIRECL and SHICL have failed to furnish the desired details/ information / documents sought from them vide summons dated August 30, 2010 and September 23, 2010.

87. The Noticees have in their submissions contended that the relevant details/ information/documents which were sought from them vide summons dated August 30, 2010 and September 23, 2010 were already submitted by them to SEBI and therefore, the Noticees mentioned that they have complied with the aforesaid summons. In this regard, I have perused the various submissions made by the Noticees. It is noted that the Noticees have provided a table of dates wherein they claimed to have submitted the information /details as sought in the summons. From the information submitted by the Noticees, it is observed that the Noticees themselves have admitted to the fact that they started providing the details/ information only from January 15, 2011 and the last set of information/details/documents were submitted by them on October 09, 2012. The table below shows the details of the same-

Information as per summons dated 30.08.2010 and 23.09.2010

Sr. No.	PARTICULARS	Information provided
1.	Details regarding filing of Prospectus/ Red-herring Prospectus with ROC for issuance of OFCDs	Copy of Red Herring Prospectus and registration acknowledgment letter issued by ROC, UP [vide Letter dated January 15, 2011]
2.	Copies of the application forms, Red-Herring Prospectus, Pamphlets, advertisements and other promotional materials circulated for issuance of OFCDs	Copy of the application forms and copy of the Information Memorandum. No pamphlet, advertisement or promotional material issued to public [vide Letter dated January 15, 2011]
3.	Details regarding number of application forms circulated, inviting subscription for OFCDS	Information provided on CD sent along with letters dated March 18, 2011, April 19, 2011 and October 9, 2012
4.	Details regarding number of applications and subscription amount received for OFCDs	Information provided on CD sent along with letters dated March 18, 2011, April 19, 2011 and October 9, 2012
5.	Date of opening and closing of the subscription list for the said OFCDs	Letter dated January 15, 2011
6.	Number and list of allotees for the said OFCDS and the number of OFCDs allotted and value of such allotment against each allottee's name	Information provided on CD sent along with letters dated March 18, 2011, April 19, 2011 and October 9, 2012
7.	Date of allotment of OFCDs	Vide Letter dated January 15, 2011
8.	Copies of the minutes of Board/ committee meeting in which the resolution has been passed for allotment	Vide reply dated May 30, 2011 to Show Notice Dated May 20, 2011
9.	Copy of Form 2 (along with annexures) filed with ROC, if any, regarding issuance of OFCDs or equity shares arising out of conversion of such OFCDs	No such form required to be filed [vide Letter dated January 15, 2011]
10.	Copies of the Annual Reports filed with Registrar of Companies for the immediately preceding two financial years	Copy of annual report for financial year 2009 [vide Letter dated January 15, 2011]
11.	Date of dispatch of debenture certificate, etc.	No debenture certificate issued [vide Letter dated January 15, 2011]

88. From the above, it is observed that the Noticees took time as late as till October 2012 to submit the requisite details/information sought vide summons dated August 30, 2010 and September 23, 2010. In fact, when the summons was issued to the Noticees during investigation process, initially, the Companies i.e SIRECL and SHICL did not comply with the summons and adopted a defiant stand by raising the issue of jurisdiction of SEBI in seeking the information. The relevant observations made in this regard are already discussed in the earlier paragraphs of this order. It was only after around four months that the two entities i.e SIRECL and SHICL started providing partial information

to SEBI. Further, the critical information/details such as the number of application forms circulated in the OFCDs, no. of applications received and subscription amount collected, details pertaining to the number of investors/allotees etc were not provided to SEBI by the Noticees till October 2012.

89. It is observed that the Noticees withheld basic information from SEBI regarding the OFCD issues, which also hampered the progress of the investigation conducted by SEBI in the matter. As the Noticees failed to provide the necessary details/information, as required, SEBI collected certain relevant details from the filings made by SIRECL and SHICL with the respective RoCs, as available on the 'MCA21 Portal' (maintained by MCA). In absence of the basic information such as the details of the investors of OFCDs, SEBI was unable to verify the veracity of such OFCD issuances. In my view, the issue of jurisdiction which was raised by the Noticees time and again was only to avoid sharing of information regarding the OFCDs with SEBI, which would have revealed the fraud and deceit played by the Noticees on the investors of the OFCD issuances made in 2008 and 2009. The contention of the Noticees that the information/details sought from them vide summons dated August 30, 2010 and September 23, 2010 were not provided by them to SEBI as they were under the bonafide belief that they do not fall under the jurisdiction of SEBI is not acceptable. The Noticees were fully aware of the fact that the OFCDs were proposed to be issued by them to more than 49 shareholders and therefore, in terms of section 67(3) of the Companies Act, these issuances are nothing but public issue of securities and would fall within the jurisdiction of SEBI. The relevant observations in this regard are already discussed in the preceding paragraphs of this order and the same are not repeated for sake of brevity. Therefore, in my view, the Noticees deliberately chose to avoid the submission of the details/information to SEBI and cited jurisdictional issue etc to avoid complying with the summons and also complying with the regulatory requirements mandated for public issues. Clearly, from the above observations, it is evident that Noticees have failed to comply with the summons issued to them by SEBI.

90. In this regard, it is pertinent to draw reference to the observations made by Hon'ble SC in its Order dated August 31, 2012, wherein it has been adequately held by Hon'ble SC

that the entities viz. SIRECL and SHICL were withholding vital information from SEBI which makes the whole affair as *"doubtful, dubious and questionable"*;

> *"Learned counsel representing SEBI also invited our attention to the attempt at the hands of the appellant-companies in withholding information from the SEBI. Details in this behalf have already been recorded under the first perspective, while debating the issue whether the invitation to subscribe to the OFCDs issued by SIRECL and SHICL was by way of "private placement". The aforesaid details are accordingly not being narrated again for reasons of brevity. I shall therefore, merely summarise the sequence of facts relevant for determining the willingness of the appellant-companies to disclose information sought by the SEBI. In this behalf, it is clear that the appellant-companies did not disclose information to SEBI despite its repeated requests. Not even, in the response to the summons (dated 30.8.2010 and 23.9.2010) issued by the SEBI containing threats of taking penal action and initiation of criminal prosecution. All this, failed to prompt the appellant-companies to divulge the facts solicited. Thereafter on 24.11.2010 the SEBI (FTM) passed far reaching directions against the appellant-companies. The Lucknow Bench of the High Court of Judicature at Allahabad on 13.12.2010 first stayed (whereby the SEBI (FTM) order dated 24.11.2010 was stayed) and thereafter, vacated the interim order passed in favour of the appellant-companies. While vacating the aforesaid order the High Court took express note of the fact, that the appellant-companies were not cooperating with the inquiry being conducted by the SEBI. The High Court felt, that the appellant-companies had thereby violated the assurance given to the High Court. The effort made by the appellant-companies to resurrect the earlier interim order (dated 13.12.2010) through an application filed before the High Court was rejected (on 29.11.2011), because the High Court was of the considered view, that the appellant-companies had not approached the High Court with clean hands, and the intention of the appellant-companies was not bona fide. Consequent upon directions issued by this Court, SEBI issued a second show cause notice (on 20.5.2011). The appellant-companies adopted the same stubborn position. They contested the show cause notice on legal pleas, and calculatingly did not disclose the information sought.*

The SEBI (FTM) by an order dated 23.6.2011 held, that the appellant-companies were in violation of law. The said order dated 23.6.2011 was assailed by the appellant-companies before the SAT. In the appeals preferred before the SAT, the appellant-companies remained steadfast in their approach by adopting the same course, as they had chosen before the SEBI (FTM). For the first time before this Court, in their challenge to the SAT order dated 26.8.2011 (whereby the SEBI (FTM) order dated 23.6.2011 was upheld), some details were disclosed by SIRECL. On an analysis the material placed before this Court, I have recorded hereinabove, that the same seemed to be unrealistic, and may well be, fictitious, concocted and made up. Independently of the interaction of the appellant-companies with SEBI, from letters written by SIRECL in January, 2011, it was concluded by the SEBI (FTM), that the company was seeking professional services to collect and compile data pertaining to the OFCDs issued by it. Since the subscription to the OFCDs under reference commenced in March, 2008, the same raised suspicious about the genuineness and the bonafides of the appellant-companies. Surely the suspicion was well placed. This itself is sufficient to conclude, that the whole affair was doubtful, dubious and questionable. The consequence thereof, if correct, would be shocking."

81. The rules of natural justice being founded on principles of fairness can be available only to a party which has itself been fair, and therefore, deserves to be treated fairly. The first determination rendered hereinabove (on the issue whether the invitation to subscribe to OFCDs by SIRECL and SHICL were by way of "private placement" or by way of an issue "to the public"), reveals that inspite of best efforts made by SEBI, neither of the two companies furnished the information solicited from them. Information was obtained by SEBI directly from MCA-21 portal maintained by the Ministry of Corporate Affairs. Added to this, SEBI inter alia relied on facts collected through its Investigating Authority. Based on the aforesaid material SEBI (FTM) ventured to determine the controversy before it.

Whether or not the two companies herein, could be permitted to agitate against the factual determination rendered by the SEBI (FTM), based on inquiries made at the behest of the SEBI (through its Investigating Authority), would depend upon their *fairness in furnishing the materials sought by SEBI. It is apparent, that both SIRECL and SHICL, based on one excuse or another, did not provide the factual details sought by the SEBI, though the same were available with them. On some occasions, the excuses for not furnishing the information, were outrageously absurd (as discussed in an earlier part of the order). Having declined to furnish facts sought by SEBI, the SEBI was left with no other alternative but to garner shreds of information from one or the other source. Every time SEBI sought details from the appellant-companies, SEBI was affording the two companies an opportunity to substantiate their claim (that the invitation to subscribe to OFCDs was by way of "private placement"). In this way several opportunities were afforded to the appellant-companies to substantiate their stance. Having gathered information on its own (based on its own inquiries, as well as, through its Investigating Authority), SEBI arrived at certain factual conclusions. Must the appellant-companies be again called upon for their comments, before the SEBI can proceed further with the matter, is the important question. If the material, gathered by the SEBI (FTM) must be first provided to the concerned companies, and their responses sought under the rules of natural justice, would it not amount to putting a premium on their non-cooperative and unfair stance? Do the rules of natural justice have any limitations? Whether fair or not, must the concerned party always enjoy the advantage of procedural prescriptions under the rules of natural justice? It is in respect of these propositions, that an answer is being attempted. In so far as the present controversy is concerned, opportunities were repeatedly provided by SEBI, to the appellant-companies, but they remained adamant and obstinate. Based on one excuse or the other, they declined to furnish the information sought. What needs to be noticed in the present controversy is, that the appellant-companies did not dispute the factual position (recorded by the SEBI (FTM) from the details furnished by the Investigating Authority) before the SAT. The two companies could have easily done so by providing the details available with them. Even before the SAT, they did not come out with the correct factual position. The material sought by SEBI from the two companies, would have constituted a valid basis to decipher and unravel the true factual position. Interestingly, to get over the crisis, emerging from the facts discovered by the Investigating Authority, the appellant-companies relied on technicalities of law, by canvassing their claim under* *the rules of natural justice. What the appellant-companies overlook is, that in actuality numerous opportunities were afforded to them to disclose information available with them, but they choose to shun the liberty. The data available with the appellant companies was preserved as a closely guarded secret. That position has*

remained unaltered throughout. A person who has repulsed earlier opportunities (as the appellant-companies have), has no right to demand any further opportunity under the rules of natural justice. The appellant-companies cannot be heard to say, that though they had consciously kept all the facts secret, they should have all the same been given an opportunity under the rules of natural justice to disclose the secrets? One would therefore, have no hesitation in concluding, that a party which has not been fair, cannot demand a right based on a rule founded on fairness. Inspite of the aforesaid conclusion, it would be wrong to assume that the appellant-companies were remediless. That remedy was, to place the correct factual data, supported by documents in their custody before the adjudicating authorities."

91. Thus, it is clear from the observations/discussions made above and also from the conclusions drawn by Hon'ble Supreme Court in its Order dated August 31, 2012 that SIRECL and SHICL failed to furnish the relevant information/details/ documents, which were sought from them by SEBI, vide summons dated August 30, 2010 and September 23, 2010. Further, it is also observed that the Noticees did not provide the information/details/document sought vide the summons issued by SEBI within the stipulated time period. There is a statutory duty cast upon a person who is called upon to furnish the required details/ information to assist SEBI in its investigations so as to carry out its functions effectively. Non-compliance with the summons issued by SEBI during the course of investigations cannot be treated as trivial and has to dealt with sternly as it impedes the progress of the investigations, which was observed in this case. Despite the importance of the details/documents sought by SEBI in the context of the investigation, and despite having brought to the attention of the Noticees about the consequence of not furnishing the details/information and also the consequence arising out of failure to comply with the summons, the Noticees were evidently reluctant to submit the details / information to SEBI. It is observed that the details/information sought from the Noticees were of a basic nature and the same should have been in their

possession and furnished easily. However, it is observed that there was reluctance and resistance on the part of the Noticees to furnish the details/information to SEBI in respect of the OFCD issuances made by them. As already stated, the said details/information were relevant for SEBI to examine the matter w.r.t the OFCD issuances made by the Noticees in the context of the delegated provisions of the Companies Act read with the provisions of the SEBI Act, Regulations and the guidelines made there-under.

92. During the course of the proceedings, it was also contended by the Noticees that the individual Noticees i.e the promoter/directors were not served with the summons and only the companies viz. SIRECL and SHICL were issued with the summons. It was therefore contended by the Noticees that the question of non-compliance with the summons by the promoter/directors of SIRECL and SHICL did not arise. I am not in agreement with the aforesaid contentions /argument of the Noticees. In this regard, I note that the company, though a legal entity cannot act by itself, it can act only through its directors. If the summons is issued to the company, the directors are expected to exercise their powers on behalf of the company and perform their duties with skill and diligence and ensure compliance with the summons issued to the company. In this regard, I find that the summons dated August 30, 2010 and September 23, 2010 were addressed to the Managing Director of SIRECL and SHICL. I also note that the Directors of SIRECL and SHICL, in their replies, *inter alia, stated* that in none of companies is there any managing director and one of the three directors chair the board meetings of SIRECL and SHICL as and when it is convenient. In the context of the OFCD issuances, it is observed that the Directors/promoter of the companies have signed the declarations in the RHPs and they were signatories to the RHP filed with the RoC.

93. Therefore, in view of the above observations and in my assessment, the Noticees i.e SIRECL, SHICL and their promoter/directors are liable for action w.r.t non-compliance with the summons issued to SIRECL and SHICL. In view of the same, I conclude that the Noticees have failed to comply with the summons dated August 30, 2010 and September 23, 2010, which were issued to them by the IA of SEBI and therefore, the Noticees are liable for penalty under the provisions of section 15A(a) of the SEBI Act.

E. Non-compliance with the SEBI order dated June 23, 2011 by the Noticees, as modified by the Orders dated August 31, 2012 and December 05, 2012 of the Hon'ble Supreme Court.

94. As already mentioned, on receipt of various complaints against the Sahara Companies i.e SIRECL and SHICL, SEBI initiated an investigation into the matter of issuance of OFCDs by them. While the investigation was in progress, SEBI vide an interim order-cum-show cause notice dated November 24, 2010, *prima facie*, observed that SIRECL and SHICL and their promoter/directors had violated the various delegated provisions of the Companies Act read with SEBI Act and the provisions of the DIP Guidelines and ICDR Regulations. In response, SIRECL, SHICL and Noticee no. 4 / Shri Ashok Roy Choudhary, who was the director of both the Companies, had filed a writ petition against the aforesaid SEBI interim order dated November 24, 2010 before the Lucknow Bench of the Hon'ble Allahabad High Court. The Hon'ble High Court, Allahabad vide its order dated December 13, 2010 stayed the operations of the aforesaid order passed by WTM-SEBI with liberty to SEBI to proceed with the inquiry but no final decision shall be taken. Subsequently, Hon'ble High Court vide its order dated April 07, 2011 vacated the interim order dated December 13, 2010 which had stayed the operations of the SEBI's order dated November 24, 2010. The two entities viz. SIRECL, SHICL then filed a Special Leave Petition (SLP) before the Hon'ble Supreme Court against the order dated April 07, 2011 of the Hon'ble High Court, Allahabad. The Hon'ble Supreme Court, vide its order dated May 12, 2011, directed SEBI to expeditiously hear the matter and decide the case so that it can pass suitable orders on re-opening in July, 2011.

95. Thereafter, on completion of the investigation, SEBI in compliance with the order and directions of the Hon'ble Supreme Court passed an order dated June 23, 2011 (final order) and issued the following directions to SIRECL, SHICL and their promoter/ directors i.e the Noticees :

> a) *"The two Companies, Sahara Commodity Services Corporation Limited (earlier known as Sahara India Real Estate Corporation Limited) and Sahara Housing Investment Corporation Limited and its promoter, Mr. Subrata Roy Sahara, and the directors of the said companies, namely,*

Ms. Vandana Bhargava, Mr. Ravi Shankar Dubey and Mr. 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.

b) *Such repayment shall be effected only in cash through Demand Draft or Pay Order.*

c) *Sahara Commodity Services Corporation Limited (earlier known as Sahara India Real Estate Corporation Limited) and Sahara Housing Investment Corporation Limited 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.*

d) *Sahara Commodity Services Corporation Limited (earlier known as Sahara India Real Estate Corporation Limited) and Sahara Housing Investment Corporation Limited are restrained from accessing the securities market for raising funds, till the time the aforesaid payments are made to the satisfaction of the Securities and Exchange Board of India.*

e) *Further, Mr. Subrata Roy Sahara, Ms. Vandana Bhargava, Mr. Ravi Shankar Dubey and Mr. 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.*

96. Aggrieved by the above order dated June 23, 2011 of SEBI, the Noticees i.e SIRECL and SHICL along with their promoter/ directors, filed two separate appeals before the

Hon’ble SAT against the SEBI Order dated June 23, 2011. Hon’ble SAT vide its common order dated October 18, 2011 dismissed both the appeals filed by the Noticees and upheld the order passed by SEBI and directed SIRECL and SHICL to repay the amount collected by way of OFCDs within six weeks from the date of the order on the terms set out in the SEBI order dated June 23, 2011.

97. Thereafter, aggrieved by the above order of Hon’ble SAT, the Noticees filed an appeal before the Hon'ble Supreme Court, which the Hon’ble SC had disposed of by way of an order dated August 31, 2012 upholding the Orders of WTM - SEBI dated June 23, 2011 and also the Order of Hon’ble SAT dated October 18, 2011. While upholding the above orders of Hon’ble SAT and WTM-SEBI, the Hon’ble SC, *vide its Order dated August 31, 2012, inter-alia, observed that "the OFCDs issued by Saharas were public issue of debenture, hence Securities. Once there is an intention to issue shares or debenture to the public, it is/ was obligatory to make an application to one or more recognized stock exchanges, prior to such issue. Registration of RHPs by the Office of the Registrar does not mean that the mandatory provisions of Section 67(3), 73(1) and DIP Guidelines be not followed. Saharas could not have filed RHP or any prospectus with RoC, without submitting the same to SEBI under Clauses 1.4, 2.1.1 and 2.1.4 of DIP Guidelines. Unlisted companies like Saharas when made an offer for shares or debentures to fifty or more persons, it was mandatory to follow the legal requirements of listing their securities. <u>Once the number forty nine is crossed, the proviso to Section 67(3) kicks in and it is an issue to the public, which attracts Section 73(1) and an application for listing becomes mandatory which fall under the administration of SEBI under Section 55A(1)(b) of the Companies Act."</u>* <u>Hon'ble Supreme Court further held that "*SEBI, in the facts and circumstances of the case, has rightly claimed jurisdiction over the OFCDs issued by Saharas. Saharas have no right to collect Rs. 27000 crores from three crore investors without complying with any regulatory provisions contained in the Companies Act, SEBI Act, Rules and Regulations."*</u>

98. The Hon’ble Supreme Court vide the aforesaid order issued the following directions in modification of the operative part of the directions issued by SEBI (vide its order dated June 23, 2011) as under:

a) *Saharas (SIRECL & SHICL) would refund the amounts collected through RHPs dated 13.3.2008 and 16.10.2009 along with interest @ 15% per annum to SEBI from the date of receipt of the subscription amount till the date of repayment, within a period of three months from today, which shall be deposited in a Nationalized Bank bearing maximum rate of interest.*

b) *Saharas are also directed to furnish the details with supporting documents to establish whether they had refunded any amount to the persons who had subscribed through RHPs dated 13.3.2008 and 16.10.2009 within a period of 10 (ten) days from the pronouncement of this order and it is for the SEBI (WTM) to examine the correctness of the details furnished.*

c) *We make it clear that if the documents produced by Saharas are not found genuine or acceptable, then the SEBI (WTM) would proceed as if the Saharas had not refunded any amount to the real and genuine subscribers who had invested money through RHPs dated 13.3.2008 and 16.10.2009.*

d) *Saharas are directed to furnish all documents in their custody particularly, the application forms submitted by subscribers, the approval and allotment of bonds and all other documents to SEBI so as to enable it to ascertain the genuineness of the subscribers as well as the amounts deposited, within a period of 10 (ten) days from the date of pronouncement of this order.*

e) *SEBI (WTM) shall have the liberty to engage Investigating Officers, experts in Finance and Accounts and other supporting staff to carry out directions and the expenses for the same will be borne by Saharas and be paid to SEBI.*

f) *SEBI (WTM) shall take steps with the aid and assistance of Investigating Authorities/Experts in Finance and Accounts and other supporting staff to examine the documents produced by Saharas so as to ascertain their genuineness and after having ascertained the same, they shall identify subscribers who had invested the money on the basis of RHPs dated 13.3.2008 and 16.10.2009 and refund the amount to them with interest on their production of relevant documents evidencing payments and after counter checking the records produced by Saharas.*

g) *SEBI (WTM), in the event of finding that the genuineness of the subscribers is doubtful, an opportunity shall be afforded to Saharas to satisfactorily establish* *the same as being legitimate and valid. It shall be open to the Saharas, in such an eventuality to associate the concerned subscribers to establish their claims. The decision of SEBI (WTM) in this behalf will be final and binding on Saharas as well as the subscribers.*

h) SEBI (WTM) if, after the verification of the details furnished, is unable to find out the whereabouts of all or any of the subscribers, then the amount collected from such subscribers will be appropriated to the Government of India.

i) We also appoint Mr. Justice B.N. Agrawal, a retired Judge of this Court to oversee whether directions issued by this Court are properly and effectively complied with by the SEBI (WTM) from the date of this order. Mr. Justice B.N. Agrawal would also oversee the entire steps adopted by SEBI (WTM) and other officials for the effective and proper implementation of the directions issued by this Court. We fix an amount of Rs.5 lakhs towards the monthly remuneration payable to Mr. Justice B.N. Agrawal, this will be in addition to travelling, accommodation and other expenses, commensurate with the status of the office held by Justice B.N. Agrawal, which shall be borne SEBI and recoverable from Saharas. Mr. Justice B.N. Agrawal is requested to take up this assignment without affecting his other engagements. We also order that all administrative expenses including the payment to the additional staff and experts, etc. would be borne by Saharas.

j) We also make it clear that if Saharas 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 realizations of the amounts.

99. Thereafter, in compliance with the directions of the Hon’ble SC, SEBI vide letter dated November 1, 2012 directed SIRECL and SHICL to furnish the details of all the bank accounts and properties held by them. The said letter of SEBI also referred to the judgment of the Hon’ble Supreme Court dated August 31, 2012, as aforesaid, and specifically stated that SIRECL and SHICL have failed to furnish the documents to SEBI within the stipulated time period and thereby violated the directions of the Hon'ble

Supreme Court. Thereafter, appeal was filed by the Noticees before the Hon'ble SAT and in this regard, the Hon'ble SAT vide its order dated November 29, 2012 held that the appeal filed by the Sahara Companies i.e SIRECL and SHICL was premature and was not, therefore maintainable. Aggrieved by the said order of the Hon'ble SAT, SIRECL and SHICL filed an appeal in the matter before the Hon'ble Supreme Court and Hon'ble SC vide its order dated December 5, 2012 disposed of the appeal with the following directions:-

> *"The appellants shall immediately hand over the Demand Drafts, which they have produced in Court, to SEBI, for a total sum of Rs. 5120/- Crores and deposit the balance in terms of the order of 31st August, 2012, namely, Rs. 17,400/- Crores and the entire amount, including the amount mentioned above, together with interest at the rate of 15 per cent, per annum, with SEBI, in two installments. The first installment of Rs. 10,000/-Crores, shall be deposited with SEBI within the first week of January, 2013. The remaining balance, alongwith the interest, as calculated, shall be deposited within the first week of February, 2013. The time for filing documents in support of the refunds made to any person, as claimed by the appellants, is extended by a period of 15 days. On receipt of the said documents, SEBI shall implement the directions contained in the order passed on 31st August, 2012. In default of deposit of the said documents within the stipulated period, or in the event of default of deposit of either of the two installments, the directions contained in paragraph 10 of the aforesaid order dated 31st August, 2012, shall immediately come into effect and SEBI will be entitled to take all legal remedies, including attachment and sale of properties, freezing of bank accounts etc. for realization of the balance dues."*

100. It is however observed from the records made available that the Noticees failed to refund the entire amount raised by way of the issuance of the OFCDs, which is in contravention of the directions issued vide SEBI Order dated June 23, 2011. It is observed that the original principal amount collected by SIRECL and SHICL from the investors was Rs 24,029.73 crores (as per the Order of Hon'ble SC dated August 31, 2012). In addition to the above amount, the Sahara Companies i.e SIRECL and SHICL were also directed

to pay interest on such amount at the rate of 15% p.a. In this regard, the relevant information on the amount refunded by SIRECL and SHICL and as reflected in the data mentioned in Annual Report of SEBI for the Financial Year 2020-21 is as under:

C. Amount received from the Saharas

Pursuant to various Orders passed by the Hon'ble Supreme Court and the attachment Orders dated February 13, 2013 passed by SEBI, as on March 31, 2021, an aggregate amount of about Rs. 15,473 crore has been recovered by SEBI. These amounts along with interest earned on them after providing for making refunds to the Bond holders have been deposited in various nationalized banks in terms of the judgment dated August 31, 2012 of the Hon'ble Supreme Court.

As on March 31, 2021, the total amount deposited in these bank accounts is Rs 23,191 crore.

101. Thus, from the above observations, the Noticees have clearly failed to comply with the directions contained in the SEBI Order dated June 23, 2011, which was modified by the Hon'ble SC vide its Orders dated August 31, 2012 and December 5, 2012. The Noticees have not even deposited the entire principal amount collected in the designated 'SEBI-Sahara Refund account' till date. In this context, the Noticees have contended that the Order of WTM - SEBI dated June 23, 2011 and the Order dated October 18, 2011 passed by the Hon'ble SAT have been merged completely into the judgment vide Orders of the Hon'ble SC dated August 31, 2012 read with Order dated December 5, 2012. Therefore, the Noticees have contended that the present SCN dated March 28, 2013 is not legally tenable as the said order dated June 23, 2011 of WTM- SEBI had ceased to exist. The contention of the Noticees is that the SCN issued to them in the context of the present proceedings was issued much after the passing of the aforementioned orders of the Hon'ble SC. Therefore, the Noticees contended that the said order dated June 23, 2011 of WTM- SEBI had ceased to exist as it got merged into the Hon'ble SC Orders, as aforesaid. Hence, the Noticees contended that the question of non-compliance with the SEBI Order dated June 23, 2011 by them did not arise, as alleged in the SCN dated March 28, 2013. In other words, Noticees contended that since the SEBI Order dated June 23, 2011 got merged into the judgment of Hon'ble SC vide Order dated August 31,

2012 read with order dated December 5, 2012, there was no question of non-compliance by them with the SEBI Order dated June 23, 2011, as alleged in the SCN. The Noticees have vehemently contended that the SEBI Order dated June 23, 2011 no longer operates and/or survives in the eyes of law, having merged into judgment of Hon'ble SC vide its Orders dated August 31, 2012 read with Order dated December 5, 2012. In view of the above reasons, the Noticees have stated that the instant SCN dated March 28, 2013 is not maintainable.

102. Therefore, in view of the above observations, Noticees have raised the issue of '*Doctrine of Merger*' and contended that the Order of SEBI dated June 23, 2011 has been modified by the Hon'ble Supreme Court - by its Orders dated August 31, 2012 and December 05, 2012. In view of the modifications made by the Hon'ble SC to the SEBI Order dated June 23, 2011, the Noticees have contended that the principle of '*Doctrine of Merger*' would apply in the facts and circumstances of the present matter as the SEBI Order dated June 23, 2011 has been replaced by the judgments of Hon'ble SC, as aforesaid. In support of their argument on '*Doctrine of Merger*', the Noticees relied upon three judgments viz. (a) Gojer Brothers Pvt Ltd v Shri Ratanlal {1975} 1 SCR 394- paras 7-10 and 11 (b) Kunhayammed & Ors vs State of Kerala & Anr. (AIR 2000 SC 2587)- paras 10-12 and 14(4) and (c) Collector of Customs, Calcutta vs East India Commercial Co. Ltd, Calcutta and Others {1963} 2 S.C.R/AIR 1963 SC 1124- para 4 .

103. The various contentions/ submissions made by the Noticees in this regard have been examined. Further, I have also examined the various judgments referred to by the Noticees in this regard and the following observations are made in this context:

   i. The Order of SEBI dated June 23, 2011 contained several directions, mentioned in the pre- paras, including the direction issued regarding the mode of payment and the timeline for carrying out such refunds by the Noticees.
   ii. Hon'ble SAT vide its Order dated October 18, 2011 had upheld the aforesaid order of SEBI and extended the time line for making the payments by the Noticees. The time period for making the refund of money by the Noticees was further extended on the basis of an application filed by the Noticees before the Hon'ble Supreme Court vide orders dated November

28, 2011 and January 09, 2012. It is noted that the Hon'ble SC had not stayed the operations and/or the directions contained in the SEBI Order dated June 23, 2011.

iii. As a result, only extension of time for refund of money to the investors was granted by the Hon'ble Supreme Court and all other directions in the SEBI order dated June 23, 2011 continued to be in force till the date of the judgement of Hon'ble Supreme Court dated August 31, 2012. In this regard, the operative portion of the judgment dated August 31, 2012 of Hon'ble SC itself records these orders/ conclusion as follows :

"The order passed by this Court in C.A. No.9813 of 2011 filed by SIREC and in C.A. No.9833 of 2011 filed by SHICL, praying for extending the time for refund of the amount of Rs.17,400 crores, as ordered by SAT, stands vacated and consequently the entire amount, including the amount mentioned above will have to be refunded by Saharas with 15% interest. We have gone through each other's judgment and fully concur with the reasoning and the views expressed therein and issue the following directions in modification of the directions issued by SEBI (WTM) which was endorsed by SAT:…"

iv. Therefore, any refunds made by the Noticees, whether done voluntarily or under compulsion or as due under the terms of the OFCDs could have only been done through banking channels, as required under the SEBI order dated June 23, 2011 as well as under the provisions of Section 73 of the Companies Act,1956 and various circulars issued by the GoI u/s 73 of the Companies Act.

104. However, the Noticees have claimed that they made substantial refund of the amounts to the investors of the OFCDs through cash, even before the Order of the Hon'ble Supreme Court dated August 31, 2012. However, such refunds claimed to have been made by the Noticees in cash are neither verifiable due to lack of proper documentary record /evidence nor such payments can be recognized for the purpose of the satisfaction of the judgment since they are in violation of the law and also violated the direction contained in the SEBI order dated June 23, 2011. Therefore, such act of non-

refund of the amounts/monies, as directed by SEBI vide Order dated June 23, 2011, constitutes a violation of the directions issued by the said SEBI Order dated June 23, 2011, which was in force before the Order of the Hon'ble SC dated August 31, 2012.

105. The Hon'ble SC in the matter of Gojer Bros (as cited by the Noticees) had held that, *'the juristic justification for doctrine of merger is based on the common law principle that there cannot be, at one and the same time, more than one operative order governing the subject matter and the judgment of the inferior court is deemed to lose its identity and merges with the judgment of the superior court'*. Therefore, from the above judgment, for the principle of 'doctrine of merger' to operate at a particular time, there must be more than one order in existence. The merger of the SEBI order dated June 23, 2011 into judgment dated August 31, 2012 of the Hon'ble Supreme Court is prospective, since prior to August 31, 2012, only one order existed i.e Order of SEBI dated June 23, 2011 and the judgment of the Hon'ble Supreme Court did not exist. As the violations were complete even before the judgment of the Hon'ble SC vide its Order dated August 31, 2012, in my assessment, as regards the allegations levelled against the Noticees w.r.t non-compliance with the SEBI Order dated June 23, 2011, the same stands established against the Noticees till August 31, 2012 i.e till the date of the Hon'ble SC Order. Therefore, I conclude that Noticees are liable for penalty under the provisions of section 15 HB of the SEBI Act for not complying with the directions issued to them vide WTM - SEBI Order dated June 23, 2011 passed under the provisions of sections 11, 11(4), 11A and 11B of the SEBI Act i.e non-compliance of the directions which have been mentioned in sub-para 1, 2 and 3 of the Para 28.1 of the said Order.

F. Role of the promoter/directors of SIRECL and SHICL viz. Shri. Subrata Roy Sahara / Noticee no. 3, Shri. Ashok Roy Choudhary / Noticee no. 4, Shri. Ravi Shanker Dubey / Noticee no. 5 and Shri. Vandana Bharrgava / Noticee no. 6 in the matter of the OFCD issuances by SIRECL and SHICL in 2008 and 2009.

106. It is observed that the other Noticees in this matter, who were the directors of SIRECL and SHICL during the relevant period viz. Noticee no. 4 / Shri. Ashok Roy Choudhary, Noticee no. 5 / Shri. Ravi Shanker Dubey and Noticee no. 6 / Ms. Vandana Bharrgava,

had signed the Declaration in the RHP of the aforesaid two companies and had given the consent for RHP and final prospectus in respect of the OFCDs issued by the two companies viz. SIRECL and SHICL. I observe that the above directors i.e Noticee nos. 4 to 6 had in fact signed the declaration in the RHP and had also given their consent for RHP and the final prospectus for the OFCDs issued by SIRECL and SHICL. It is already established that the OFCDs were public issues and therefore, the issuer companies i.e SIRECL and SHICL were required to list the OFCDs on the stock exchanges (section 73 of the Companies Act). The Noticees failed to comply with the above provisions. In terms of section 73(2) of the Companies Act, 1956 (which existed at the relevant time), the company and every director who is an officer in default is jointly and severally liable to repay the subscription money collected as the two companies failed to make an application to the stock exchanges to list the OFCDs. Therefore, the two companies, SIRECL and SHICL and their directors namely Noticee nos. 4 to 6, are liable for the same.

107. As regards Noticee no. 3 / Mr. Subrata Roy Sahara, it is noted that Noticee no. 3 has contended that he is only a shareholder and he is neither a director nor was he holding any executive, managerial or other position in either of the two companies. Therefore, Noticee no.3 has contended that the allegations levelled against him in the SCN cannot sustain. It is observed in the SCN that apart from being the founder of the Sahara India Group, Mr Subrata Roy Sahara is admittedly a major shareholder (holding about 70% of the capital each in SIRECL and SHICL). Mr Subrata Roy Sahara has contended that he was not the major shareholder of SIRECL and SHICL, as observed in the SCN. In this regard, I note that Mr. Subrata Roy Sahara has been named as the promoter of SIRECL and SHICL in the RHPs of SIRECL and SHICL dated March 13, 2008 and October 06, 2009, respectively. Further, as per the shareholding pattern of SIRECL as on August 31, 2009 and as disclosed in the DRHP of SPCL filed with SEBI, Mr. Subrata Roy Sahara was holding 30,000 shares constituting 30% shares of SIRECL as on the date of filing of the said DRHP. Further, Mr Subrata Roy Sahara was also holding 75.66% in Sahara India Commercial Corporation Ltd, which in turn was holding 45,000 shares (45%) of SIRECL. Therefore, the total shareholding of Mr Subrata Roy Sahara in SIRECL (both direct and indirect) showed that he was the significant shareholder of

the company during the relevant time. Similarly, from the DRHP of SPCL, Mr Subrata Roy Sahara was directly holding 52% shares in SHICL and his wife was holding 2% shares in SHICL. Further, he along with his wife were holding 89.73% shares in Sahara India Financial Corporation Ltd, which in turn was holding 40% shares of SHICL. It is noted that while the holding of Mr. Subrata Roy Sahara in SIRECL and SHICL have been diluted over a period of time, the shares continued to be held by the promoter group companies, as stated by SIRECL and SHICL in their affidavit dated September 14, 2011 filed before the Hon'ble SAT. Further, as observed from the shareholding pattern provided in the affidavits, as mentioned above, Mr. Subrata Roy Sahara continued to hold 30% shares (64% including indirect holding) in SIRECL till November 20, 2009. Similarly, he continued to hold 52% shares in SHICL (90% including indirect shareholding) till March 05, 2010. Therefore, I conclude that, he was a person in accordance with whose directions or instructions, the Board of Directors of the two companies i.e SIRECL and SHICL were accustomed to act and therefore fall within the ambit of “officer in default” in terms of the Companies Act. Furthermore, it is observed that with the major ownership or shareholding in the Sahara Companies, as explained above, (both directly and indirectly), he is definitely in a position of control and has the power to direct the management policy and appoint the majority of directors to the Board of these companies i.e SIRECL and SHICL.

108. As mentioned in the preceding paragraphs, the RHPs filed by SHICL and SIRECL did not contain the required disclosures and included false or misleading declarations w.r.t the status of the OFCDs. The intentions of the Noticees was to issue securities to the public under the garb of private placement. In terms of Section 62 of the Companies Act, every person who is a director of the company at the time of the issue of the prospectus and every person who is a promoter of the company, are liable to pay compensation to every person who subscribes for any shares or debentures on the faith of the prospectus for any loss or damage he may have sustained by reason of any untrue statement included therein. Considering the holding of Shri. Subrata Roy Sahara in the Sahara Companies i.e SIRECL and SHICL and his position as a promoter, as succinctly discussed above, it is amply clear that he was a party to the preparation of the prospectuses issued by the two companies.

109. Further, for the purpose of the aforesaid section of the Companies Act, the expression ‘promoter’ means a promoter who was a party to the preparation of the prospectus or of the portion thereof containing the untrue statement, but does not include any person by reason of his acting in a professional capacity for persons engaged in procuring the formation of the company. Mr Subrata Roy Sahara’s name is mentioned in the RHP of both the companies i.e SIRECL and SHICL as being the first generation entrepreneur who has promoted the Sahara India group. Further, it was observed that the cheques towards the OFCD subscription in respect of the above companies were collected in the name of M/s Sahara India, a partnership firm and the promoter of the said firm is Mr Subrata Roy Sahara. Therefore, given the holding of Mr Subrata Roy Sahara / Noticee no. 3 in both SIRECL and SHICL, it is reasonable to conclude that he was in total control of the two companies viz. SIRECL and SHICL at the relevant time and therefore liable for default along with the other directors of the said two companies.

110. Therefore, from the above, it is established that Shri. Subrata Roy Sahara, Shri. Ashok Roy Choudhary, Shri. Ravi Shanker Dubey and Ms. Vandana Bharrgava i.e Noticee nos. 3 to 6 have also violated the provisions of the SEBI Act, DIP Guidelines, ICDR Regulation and PFUTP Regulations along with Noticee nos. 1 and 2 viz. SIRECL and SHICL, as already discussed in the previous paragraphs. Therefore, I conclude that Shri. Subrata Roy Sahara, Shri. Ashok Roy Choudhary, Shri. Ravi Shanker Dubey and Ms. Vandana Bharrgava i.e Noticee nos. 3 to 6 are liable for penalty under the provisions of sections 15A(a), 15HA and 15HB of the SEBI Act, as applicable, for the violations committed by SIRECL and SHICL.

111. The provisions of sections 15A(a), 15HA and 15HB of the SEBI Act (which existed at the relevant time) are mentioned below:

> ***15A.*** *Penalty for failure to furnish information, return, etc.- If any person, who is required under this Act or any rules or regulations made thereunder,-*

(a) to furnish any document, return or report to the Board, fails to furnish the same, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less;

***15HA**.Penalty for fraudulent and unfair trade practices.- If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty of twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher.*

***15HB.**Penalty for contravention where no separate penalty has been provided.- Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which may extend to one crore rupees.*

112. In terms of Section 15 I of the SEBI Act, while determining the quantum of penalty, it is important to consider the relevant factors as stipulated in Section 15J of the SEBI Act, which reads as under: -

Factors to be taken into account by the adjudicating officer.
***15J.** While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-*
***(a)** the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;*
***(b)** the amount of loss caused to an investor or group of investors as a result of the default;*
***(c)** the repetitive nature of the default.*

113. While determining the quantum of penalty on the Noticees, I have considered the above factors and also the material/observations on record. From the aforementioned conduct and action of the Noticees, it is clear that their intention right from the beginning was to issue the securities i.e the OFCDs to the public under the garb of private placement. The RHPs issued by SIRECL and SHICL falsely indicated that they did not intend the proposed issue of OFCDs to be listed on any stock exchange, even though in reality the

securities were issued to the public and were coming under the regulatory provisions of the SEBI Act and the regulations and guidelines framed thereunder. It is clear that there was a pre-planned attempt on the part of SIRECL, SHICL and other Noticees, to bypass the regulatory and administrative authority of SEBI in respect of the said issuance of the OFCDs and the bonafides of the Noticees with regard to the issue of the OFCDs were not genuine right from the beginning. Clearly, when the Noticees falsely represented that the OFCD issue was a private placement of securities, they deprived the investors of the various measures of investor protection which were available to them under the delegated provisions of the Companies Act r/w the provisions of the DIP guidelines and the ICDR Regulations. Further, it is observed that the Noticees are yet to comply with the order of Hon'ble SC in this regard. It is noted that, as on March 31, 2021 (SEBI Annual Report), an aggregate amount of about Rs. 15,473 crore has been recovered by SEBI from SHICL and SIRECL, out of the original amount of around Rs. 23,000 crore. It is observed that in addition to the principal amount, the Noticees are also liable for refund of the interest amount calculated on the principal amount of Rs. 23,000 crore. However, as observed, the principal amount itself is not fully refunded by the Noticees and the interest amount is still pending for refund by them. Clearly, from the above observations, the Noticees have failed to comply with the directives of the Hon'ble SC vide Order dated August 31, 2012, which has modified the SEBI Order dated June 23, 2011. The blatant non-compliance with the summons by the Noticees in the instant matter is also on record and detailed observations made in this regard have already been brought out in the preceding paragraphs. It is noted that the non-compliance by the Noticees with the summons issued by SEBI was deliberate and was done with a fraudulent intent to conceal the fraud, which was committed by them on the gullible investors by way of making misleading disclosures in relation to the issuance of the OFCDs. Finally, I have also taken note of the fact that the Order of SEBI dated June 23, 2011 was modified vide Orders of Hon'ble Supreme Court dated August 31, 2012 and December 05, 2012. Thus, the allegation/charge established against the Noticees of non-compliance with the SEBI Order dated June 23, 2011 and the directions issued therein is for the period from June 23, 2011 (date of WTM- SEBI order) till August 31, 2012 (date of the Order of Hon'ble Supreme Court).

ORDER

114. Having considered all the facts and circumstances of the case, the material available on record, the factors mentioned in section 15J of the SEBI Act and in exercise of the powers conferred upon me under section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose the following penalties on the Noticees under the provisions of Sections 15A(a), 15HA and 15HB of the SEBI Act as per the Table below:

Sr. No.	Name of the Noticee	Violation Committed	Penal Provisions	Penalty imposed
1	Sahara India Real Estate Corporation Limited (Noticee no. 1) Shri. Subrata Roy Sahara (Noticee no.3) Shri. Ashok Roy Choudhary (Noticee no.4) Shri. Ravi Shanker Dubey (Noticee no. 5) Smt. Vandana Bharrgava (Noticee no.6)	Clauses 2.1.1., 2.1.4., 2.1.5., 2.2, 2.5, 2.8, 4.11, 4.14, 5.3.1., 5.6.2, 6.0 to 6.15, 8.8.1, 8.17, 10.0 to 10.6 and 10.9 of the DIP Guidelines read with Regulations 4(2), 5(1), 5(7), 6, 7, 16(1), 20(1), 25, 26, 36, 37, 46 and 57 of the ICDR Regulations	Section 15 HB of the SEBI Act	Rs. 1,00,00,000 (Rs. One crore only) (jointly and severally)
		Regulations 3(a), (b), (c) & (d) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities market) Regulations, 2003 read with the provisions of Sections 12 A(a), (b), (c) of the SEBI Act	Section 15 HA of the SEBI Act	Rs. 3,00,00,000 (Rs. Three crore only) (jointly and severally)
		Failure to provide information sought vide summons dated August 30, 2010 and September 23, 2010.	Section 15A(a) of the SEBI Act	Rs. 1,00,00,000 (Rs. One crore only) (jointly and severally)
		Failure to comply with the directions issued by SEBI vide Order dated June 23, 2011	Section 15HB of the SEBI Act	Rs. 1,00,00,000 (Rs. One crore only) (jointly and severally)

Total Penalty				**Rs. 6,00,00,000 (Rs. Six crore only) (jointly and severally)**
2	Sahara Housing Investment Corporation Limited (Noticee no.2) Shri. Subrata Roy Sahara (Noticee no.3) Shri. Ashok Roy Choudhary (Noticee no.4) Shri. Ravi Shanker Dubey(Noticee no.5) Smt. Vandana Bharrgava (Noticee no.6)	Regulations 4(2), 5(1), 5(7), 6, 7, 16(1), 20(1), 25, 26, 36, 37, 46 and 57 of the ICDR Regulations Regulations 3(a), (b), (c) & (d) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities market) Regulations, 2003 read with the provisions of Sections 12 A(a), (b), (c) of the SEBI Act Failure to provide information sought vide summons dated August 30, 2010 and September 23, 2010 Failure to comply with the directions issued by SEBI vide Order dated June 23, 2011	Section 15 HB of the SEBI Act Section 15 HA of the SEBI Act Section 15A(a) of the SEBI Act Section 15HB of the SEBI Act	Rs. 1,00,00,000 (Rs. One crore only) (jointly and severally) Rs. 3,00,00,000 (Rs. Three crore only) (jointly and severally) Rs. 1,00,00,000 (Rs. One crore only) (jointly and severally) Rs. 1,00,00,000 (Rs. One crore only) (jointly and severally)
Total Penalty				**Rs. 6,00,00,000 (Rs. Six crore only) (jointly and severally)**

115. In my view the said penalty is commensurate with the lapses/omissions on the part of the Noticees. The Noticees shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of demand draft in favour of "SEBI -Penalties Remittable to Government of India", payable at Mumbai, or by following the path at SEBI website www.sebi.gov.in, ENFORCEMENT > Orders > Orders of AO> PAYNOW; OR by using the web link https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html.

In case of any difficulties in payment of the penalty, the Noticees may contact the support at portalhelp@sebi.gov.in.

116. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated under section 28A of the SEBI Act, 1992 for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.

117. In terms of the provisions of Rule 6 of the Adjudication Rules, copies of this order are sent to the Noticees and also to the Securities and Exchange Board of India.

Place: Mumbai
Date: June 27, 2022

SURESH B MENON
ADJUDICATING OFFICER