

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

ORDER

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

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

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**Background –**

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

6. Before proceeding further, it is pertinent to refer to the relevant provisions of the Portfolio Managers Regulations and the Securities and Exchange Board of India (Intermediaries) Regulations, 2008 ("**Intermediaries Regulations**"), which read as under:

**"PORTFOLIO MANAGERS REGULATIONS –**

***3. Registration as portfolio manager.***

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

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

***6. Consideration of application.***

- 1. For considering the grant of certificate of registration to the applicant, the Board shall take into account all matters which it deems relevant to the activities relating to portfolio management.*
- 2. Without prejudice to the generality of the foregoing provisions, the Board shall consider whether –  
... (j) the applicant is a fit and proper person;*

***6A. Criteria for fit and proper person.***

*For the purposes of determining whether an applicant or the portfolio manager is a fit and proper person the Board may take into account the criteria specified in Schedule II of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008.*

***9. Renewal of certificate.***

- 1. A portfolio manager may, three months before the expiry of the validity of the certificate, make an application for renewal in Form A along with fees specified in clause 1 of Schedule II.*
- 2. The application for renewal, under sub-regulation (1) shall be dealt with in the same manner as if it were an application for grant of a certificate made under regulation 3.*
- 3. The Board, on being satisfied that the applicant fulfills the requirements specified in regulation 6, shall send an intimation to the applicant and on receipt of payment of renewal fees as specified in paragraph 2 of Schedule II, grant a renewal of the certificate.*

**10. Procedure where registration is not granted.**

1. *Where an application for grant of a certificate under regulation 3 or of renewal under regulation 9 does not satisfy the requirements set out in regulation 6, the Board may reject the application, after giving an opportunity of being heard.*
2. *The refusal to grant registration shall be communicated by the Board within thirty days of such refusal to the applicant stating therein the grounds on which the application has been rejected.*
3. *Any applicant may, being aggrieved by the decision of the Board under sub-regulation (1), apply within a period of thirty days from the date of receipt of such intimation, to the Board for reconsideration of its decision.*
4. *The Board shall reconsider an application made under sub – regulation (3) and communicate its decision as soon as possible in writing to the applicant.*

**11. Effect of refusal to grant certificate.**

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

**INTERMEDIARIES REGULATIONS –**

***SCHEDULE II – Criteria for determining a ‘fit and proper person’***

*For the purpose of determining as to whether an applicant or the intermediary is a ‘fit and proper person’ the Board may take account of any consideration as it deems fit, including but not limited to the following criteria in relation to the applicant or the intermediary, the principal officer and the key management persons by whatever name called –*

- a. integrity, reputation and character;*
- b. absence of convictions and restraint orders;*
- c. competence including financial solvency and networth."*

7. Pursuant to receipt of reply and in conformity with the requirements of Regulation 10(1) of the Portfolio Managers Regulations, an opportunity for personal hearing was granted to Sahara AMC, on December 4, 2014.

8. Thereafter, vide an Order dated February 27, 2015, SEBI disposed of Sahara AMC's application dated July 6, 2012, with the following directions –

*19.1 “... I, in exercise of the powers conferred upon me in terms of Section 19 of the SEBI Act read with Regulation 10 of the Portfolio Managers Regulations, hereby reject the application for renewal of Certificate of Registration as a portfolio manager, submitted by Sahara AMC.*

*19.2 In view of paragraph 19.1 –*

*a. The Certificate of Registration granted to Sahara AMC) as a Portfolio Manager, shall stand cancelled after thirty days from the date of receipt of this Order.*

*b. During the intervening period, Sahara AMC shall not take on new clients in its business under the abovementioned Certificate of Registration.*

*19.3 Sahara AMC shall, within thirty days from the date of cancellation of Certificate of Registration as a Portfolio Manager, transfer its business to another SEBI registered portfolio manager or allow the client to withdraw the securities and funds in its custody at the option of the client, and in either case, without any additional cost to the client. The option shall be granted to each client separately.”*

#### **Application for reconsideration of the SEBI Order dated February 27, 2015 –**

9.1 Subsequently, vide letter dated March 27, 2015, Sahara AMC submitted its application for reconsideration of the SEBI Order dated February 27, 2015, in accordance with the provisions of Regulation 10(3) of the Portfolio Managers Regulations.

9.2 In its application for reconsideration, Sahara AMC *inter alia* also requested for a personal hearing to be granted before any adverse Order affecting it, its employees and clients, is passed subsequent to such reconsideration.

9.3 Thereafter, on July 3, 2015, an opportunity for personal hearing was granted to Sahara AMC.

9.4 Sahara AMC submitted some information to SEBI, vide letters dated July 13, 2015 and August 7, 2015.

9.5 During the hearing held on July 3, 2015 and in its letter dated July 13, 2015, Sahara AMC *inter alia* made the following submissions –

- i. As there is a possibility of bias, judicial on the subject matter, if not personal, against Sahara AMC, it is necessary that the application for reconsideration be heard by another Member of SEBI, who has not earlier adjudicated upon the same against Sahara AMC. Reliance placed on the judgment of the Hon'ble Supreme Court in *Amernath Chowdhary vs. Braithwaite and Co. Ltd. And Others, 2002(2) SCC 290*.
- ii. For consideration of fit and proper provisions, only persons listed in Schedule II of Intermediaries Regulations read with Regulation 6A of the Portfolio Managers Regulations, could be considered viz. the applicant, its principal officer and its key employees.
- iii. The fact that Regulation 6A of the Portfolio Managers Regulations read with Schedule II of the Intermediaries Regulations does not provide for examination of persons other than the aforementioned 3 categories, is also clear from the other provisions of the Portfolio Managers Regulations, which provides for consideration of the actions of a person directly or indirectly connected with the applicant and such criteria is missing in case of consideration of fit and proper person.
- iv. Regulation 6A of the Portfolio Managers Regulations requires SEBI to consider integrity, reputation and character; absence of convictions and restraint orders; competence including financial solvency and networth of the applicant, its principal officer and its key employees. There is no adverse comment on any of the aspects in the Order dated February 27, 2015.
- v. Finding of influence of Shri Subrata Roy Sahara was flawed as –
  - a. He was not concerned with day-to-day management and had resigned as Director;
  - b. Finding based on conjectures and assumptions. No examination of actual role played by Shri Subrata Roy Sahara and only shareholding in Sahara India Financial Corporation Limited considered;
  - c. No evidence given in letter dated July 11, 2014 or Order dated February 27, 2015, about influence exercised by Shri Subrata Roy Sahara;
  - d. Finding contrary to principle of separate corporate identity. There was no reason to look beyond Sahara AMC's corporate personality;
  - e. Sahara AMC and its Directors not concerned and no allegation of wrongdoing against them.

## **Consideration of Issue and Findings –**

- 10.1 I have considered the application for reconsideration of the SEBI Order dated February 27, 2015 and also the replies/submissions made by Sahara AMC and all other relevant material available on record. In light of the same, I shall now proceed to deal with the merits of the case.
- 10.2 The issue for determination in the instant matter is whether Sahara AMC has made out any ground for reconsideration of the SEBI Order dated February 27, 2015.
- 10.3 Promoters, Directors and Shareholding Pattern in Sahara AMC subsequent to the SEBI Order dated February 27, 2015 –**
- 10.3.1 The details regarding Promoters and Directors of Sahara AMC are provided below –

### **I. Promoters –**

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

### **II. Directors –**

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

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

Sr. No.	Name of Shareholder	Type of Shares	% of total equity share capital
1	Sahara India Financial Corporation Limited	Equity	45.60
2	Sahara Care limited	Equity	31.70
3	Sahara Prime City Limited	Equity	11.35
4	Sahara India Corp Investment Limited	Equity	11.35
<b>Total</b>			100.00

#### 10.4 Promoters, Directors and Shareholding pattern in Promoter Companies of Sahara AMC –

10.4.1 During the personal hearing before me on July 3, 2015, I had directed Sahara AMC to submit the following information, viz. –

- a. Shareholding pattern in the Promoter Companies of Sahara AMC.
- b. Where shareholder in any of the abovementioned Promoter Companies is a corporate entity, then shareholding pattern in such entity.
- c. Details regarding names of Directors in the abovementioned Promoter Companies alongwith their capacity of Directorship.

10.4.2 In their reply dated July 13, 2015, Sahara AMC submitted information regarding the shareholding pattern in the four Promoter Companies of Sahara AMC. Accordingly, the shareholding pattern in Sahara India Financial Corporation Limited, as on March 31, 2015, is provided below –

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

10.4.3 Vide letter dated August 7, 2015, Sahara AMC informed SEBI that the following persons constituted the Board of Directors of Sahara India Financial Corporation Limited, viz. –

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

10.4.4 The shareholding pattern in Sahara Care Limited, as on March 31, 2015, is provided below –

<b>Sr. No.</b>	<b>Name of Shareholder</b>	<b>% of Equity Holding</b>
1.	Shri Subrata Roy Sahara	40.000
2.	Smt. Swapna Roy	20.000
3.	Shri Om Prakash Srivastava	5.000
4.	Shri Joy Broto Roy	5.000
5.	M/s SICCL (Sahara India Commercial Corporation Limited)	22.320
6.	Sahara Prime City Limited	0.003
7.	M/s Sahara One Media & Entertainment Limited	0.001
8.	Sahara India Finance & Investment Limited	0.001
9.	Sahara India Future Fund Trust	7.675
<b>Total</b>		<b>100.000</b>



10.4.5 The shareholding pattern in Sahara Prime City Limited, as on March 31, 2015, is given below –

Sr. No.	Name of Shareholder	% of Equity Holding
<b>Promoters</b>		
1.	Shri Subrata Roy Sahara	40.234
2.	Smt. Swapna Roy	6.172
3.	Shri Om Prakash Srivastava	4.216
4.	Shri Joy Broto Roy	3.238
5.	Shri Sushanto Roy	3.238
6.	Shri Seemanto Roy	3.238
<b>Promoter Group</b>		
7.	Sahara India Commercial Corporation Limited	13.170
8.	Sahara India Financial Corporation Limited	0.310
9.	Sahara Prime Realtors Private Limited	0.219
10.	Sahara Oceania Homes Private Limited	0.219
11.	Sahara Continental Estates Private Limited	0.219
12.	Sahara Prime Properties Private Limited	0.219
13.	Sahara City Development Private Limited	0.219
14.	Sahara Green Properties Private Limited	0.219
15.	Sahara New Dream Property Private Limited	0.219
16.	Sahara Milestone Estates Private Limited	0.219
17.	Sahara Oceania Property Private Limited	0.219
18.	Sahara Primedream Development Private Limited	0.219
19.	Bhadra City Homes Bijnore Private Limited	0.997
20.	Bisakha City Homes Bijnore Private Limited	0.987
21.	Chasel City Homes Bijnore Private Limited	0.980
22.	Other Shareholders	21.030
<b>Total</b>		<b>100.000</b>

10.4.6 The shareholding pattern in Sahara India Corp Investment Limited, as on March 31, 2015, is given below –

Sr. No.	Name of Shareholder	% of Equity Holding
1.	Shri Ashok R Chowdhary	0.76
2.	M/s SICCL (Sahara India Commercial Corporation Limited)	15.29
3.	Shri I Ahmad	2.80
4.	Shri U K Bose	0.76
5.	Shri Zia Qadri	0.00
6.	Smt. Vandana Bhargava	0.76
7.	Shri Satish Kumar Singh	0.00
8.	Sahara Township Private Limited	4.38
9.	Sahara Enclave Private Limited	14.58
10.	Sahara Colonizer Private Limited	12.54
11.	Sahara Residential Private Limited	14.58
12.	Sahara Complex Private Limited	14.58
13.	Sahara Buidwell Private Limited	4.39
14.	Sahara Land Arts Private Limited	14.58
<b>Total</b>		<b>100.00</b>

- 11.1 In its submissions made during the course of the hearing held on July 3, 2015, Sahara AMC had raised a preliminary objection, contending that as there is a possibility of bias, judicial on the subject matter, if not personal, against Sahara AMC, it is necessary that the application for reconsideration be heard by another Member of SEBI, who has not earlier adjudicated upon the same against Sahara AMC.
- 11.2 I note that the question of bias, judicial or otherwise, would depend on the facts and circumstances of each proceeding. In the instant proceedings, Sahara AMC has merely submitted that there *may* exist a possibility of bias without showing any facts or circumstances that may be prejudicial to its interest. I note that the instant proceedings have arisen on account of an application for reconsideration of the SEBI Order dated February 27, 2015. I note that Regulation 10(3) of the Portfolio Managers Regulations, affords an opportunity to the aggrieved applicant to apply for a reconsideration of the earlier decision. The provision for affording an opportunity to reconsider the decision is to enable the applicant to make fresh factual submissions with regard to the eligibility criteria specified in the Portfolio Managers Regulations read with the Intermediaries Regulations. I note that the facts accompanying the instant application for reconsideration are no different from those submitted earlier and which was the basis of the aforementioned SEBI Order. Sahara AMC has also not brought out any new circumstances with regard to its meeting the eligibility criteria. In view of the aforesaid, I find that the contention raised by Sahara AMC regarding a possibility of bias in the instant proceedings is devoid of merit.
- 12.1 As per Regulation 6(1)(f) of Portfolio Managers Regulations, while granting a certificate of registration the Board *shall take into account all matters which it deems relevant to the activities relating to portfolio management* including considering whether or not the applicant is a *'fit and proper person'*. Further, as per Regulation 6A of Portfolio Managers Regulations, SEBI may take into account the criteria specified in Schedule II of the Intermediaries Regulations for determining whether an applicant is a *'fit and proper person'*. From a combined reading of the aforementioned provisions of *'fit and proper person'*, it is amply clear that while considering any application for grant of registration as any intermediary, the applicant and also the persons who hold responsible positions in the applicant and/or are in a position to influence the decision making process, have to pass the test of being a *'fit and proper person'*. For the purpose of performing such test in the instant matter, it is therefore, essential that the applicability of the eligibility criteria is also extended to entities/individuals, who by virtue of their substantial shareholding in the companies controlling the applicant, are in a position to influence the activities of such applicant.

- 12.2 It is relevant to note that during the hearing held before me on July 3, 2015, Sahara AMC was directed to submit *inter alia* information regarding the shareholding of its Promoter Companies and where shareholder in any of the abovementioned Promoter Companies is a corporate entity, then shareholding pattern in such entity. While information regarding the shareholding of its Promoter Companies was provided by Sahara AMC vide its reply dated July 13, 2014, information regarding shareholding of corporate entities holding shares in such Promoter Companies, has not been provided by Sahara AMC.
- 12.3.1 From the preceding paragraphs, it is observed that Shri Subrata Roy Sahara is a substantial shareholder in Sahara India Financial Corporation Limited, Sahara Care Limited and Sahara Prime City Limited (as per information submitted by Sahara AMC and which is reproduced at paragraph 10.4.2–10.4.5). The directing mind and will of a company is found out by the factor of substantial controlling interest. In the facts of the instant matter, Shri Subrata Roy Sahara enjoys controlling interest and represents the directing mind and will of Sahara India Financial Corporation Limited, Sahara Care Limited and Sahara Prime City Limited. Therefore, Shri Subrata Roy is in an important position to exercise control and influence over the activities of the aforesaid companies. Such substantial controlling interest entailing significant influence enjoyed by Shri Subrata Roy in the aforesaid companies will also extend to Sahara AMC since Sahara India Financial Corporation Limited (Shri Subrata Roy Sahara's equity holding is 79.80%), Sahara Care Limited (Shri Subrata Roy Sahara's equity holding is 40%) and Sahara Prime City Limited (Shri Subrata Roy Sahara's equity holding is 40.234%) are Promoters of Sahara AMC and collectively hold 88.65% of the equity holding in Sahara AMC.
- 12.3.2 In addition, the remaining Promoter of Sahara AMC i.e. Sahara India Corp Investment Limited, is also a company of the Sahara group.
- 12.4 For the purpose of determining whether Sahara AMC is a '*fit and proper person*', the criteria as contained in Schedule II of the Intermediaries Regulations therefore, has to be extended to include Shri Subrata Roy Sahara since through the Promoter Companies of the aforesaid applicant i.e. Sahara India Financial Corporation Limited, Sahara Care Limited, Sahara Prime City Limited and also Sahara India Corp Investment Limited, he exercises substantial controlling interest entailing significant influence over Sahara AMC. At this juncture, I place reliance upon the Order of Hon'ble Securities Appellate Tribunal ("**SAT**") in the matter of *Jermyn Capital LLC vs. SEBI (Appeal No. 21/2006)*, wherein it observed:

*“Good reputation and character of the applicant is a very material consideration which must necessarily weigh in the mind of the Board in this regard. Reputation is what others perceive of you. In other words, it is the subjective opinion*

*or impression of others about a person and that, according to the Regulations, has to be good. This impression or opinion is generally formed on the basis of the association he has with others and/or on the basis of his past conduct. A person is known by the company he keeps. In the very nature of things, there cannot be any direct evidence in regard to the reputation of a person whether he be an individual or a body corporate. ...”*

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

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

- i. Sahara Commodity Services Corporation Limited [earlier known as Sahara India Real Estate Corporation Limited ("SIRECL")] and Sahara Housing Investment Corporation Limited ("SHICL") and its Promoter, Shri Subrata Roy Sahara, and the directors of the said companies, namely, Ms. Vandana Bhargava, Shri Ravi Shankar Dubey and Shri Ashok Roy Choudhary, jointly and severally, shall forthwith refund the money collected by the aforesaid companies through the Red Herring Prospectus dated March 13, 2008 and October 6, 2009, issued respectively, to the subscribers of such Optionally Fully Convertible Debentures with interest of 15% per annum from the date of receipt of money till the date of such repayment.*
- ii. Such repayment shall be effected only in cash through Demand Draft or Pay Order.*
- iii. SIRECL and SHICL shall issue public notice, in all editions of two National Dailies (one English and one Hindi) with wide circulation, detailing the modalities for refund, including details on contact persons including names, addresses and contact details, within fifteen days of this Order coming into effect.*
- iv. SIRECL and SHICL are restrained from accessing the securities market for raising funds, till the time the aforesaid payments are made to the satisfaction of the SEBI.*
- v. Further, Shri Subrata Roy Sahara, Ms. Vandana Bhargava, Shri Ravi Shankar Dubey and Shri Ashok Roy Choudhary are restrained from associating themselves, with any listed public company and any public company which intends to raise money from the public, till such time the aforesaid payments are made to the satisfaction of the Securities and Exchange Board of India.*

b. The Hon'ble Supreme Court of India vide its Order dated August 31, 2012 and December 5, 2013, *inter alia* directed SIRECL and SHICL to refund to SEBI the amount collected through Red Herring Prospectus dated March 13, 2008 and October 16, 2009 alongwith interest @15% per annum from the date of receipt of the subscription amount till the date of repayment within 3 months from the date of that Order. In addition to the above, vide Direction No. 10 of Order dated August 31, 2012, the Hon'ble Supreme Court directed that if SIRECL and SHICL fail to comply with these directions and do not effect refund of money

as directed, SEBI can take recourse to all legal remedies, including attachment and sale of properties, freezing of bank accounts, etc. for realizing these amounts.

- c. Subsequently, vide Orders dated February 13, 2013, SEBI, directed freezing of all bank accounts/demat accounts of Shri Ashok Roy Choudhary, Shri Ravi Shanker Dubey, Smt. Vandana Bhargava and Shri Subrata Roy Sahara. Further, it was directed to attach all movable and immovable properties standing in the names of the aforesaid persons.
- d. The Hon'ble Supreme Court of India vide Order dated November 21, 2013, held that Sahara Group of Companies shall not part with any movable or immovable properties until further orders.
- e. The Hon'ble Supreme Court of India vide Order dated March 4, 2014, ordered detention of Shri Subrata Roy Sahara and send him to judicial custody at Delhi. Shri Subrata Roy is still under judicial custody.
- f. Two criminal complaints have been filed by SEBI under Section 26(1) read with Section 27(1) of SEBI Act for an offence under Section 24(1) of SEBI Act, against SHICL and its 4 Directors/Promoters, viz. Shri Ashok Roy Choudhary, Shri Ravi Shanker Dubey, Smt. Vandana Bhargava and Shri Subrata Roy Sahara; and against SIRECL and its aforesaid 4 Directors/Promoters, for violation of various provisions of the SEBI (DIP) Guidelines, 2000 and SEBI (ICDR) Regulations, 2009; the Companies Act, 1956 and the SEBI Act. The aforesaid matters, which were filed before the 9<sup>th</sup> Metropolitan Magistrate Court at Bandra, Mumbai, were subsequently transferred to the Sessions Court at Mumbai. The learned Addl. Sessions Judge while agreeing with the submissions advanced by the SEBI counsel, passed an Order on January 27, 2015, issuing summons to the accused i.e. SHICL and its 4 Directors/Promoters & SIRECL and its 4 Directors/Promoters, in accordance with the submissions made in the application. The learned Addl. Sessions Judge presiding Court No. 39, had passed an Order dated August 5, 2015, granting bail to the Accused no. 2, 3 and 5 in the matter i.e. Shri Ashok Roy Choudhary, Shri Ravi Shanker Dubey and Shri Subrata Roy Sahara. However, on August 6, 2015, SEBI moved an application before the learned Addl. Sessions Judge presiding Court No. 39 for staying the operation of the aforesaid Order dated August 5, 2015, in order to enable SEBI to challenge the same before the Hon'ble Bombay High Court. The said application was allowed and the aforesaid Order dated August 5, 2015, was stayed. Thereafter, SEBI filed two applications i.e. Criminal Application (ST) No. 1041 and 1042 of 2015, before the Hon'ble Bombay High Court. The Hon'ble High Court vide an Interim Order dated August 8, 2015, was pleased to extend the stay granted by the

Special Court and thereafter, the said Interim Order is continued. The aforesaid applications are pending before the Bombay High Court.

- g. Adjudication proceedings have been initiated by SEBI under the SEBI Act, against SIRECL, SHICL, its Promoter, Shri Subrata Roy Sahara and its Directors, Shri Ashok Roy Choudhary, Shri Ravi Shanker Dubey and Smt. Vandana Bhargava.

## **Conclusion –**

- 14.1 Under the SEBI Act, SEBI has been assigned a statutory duty to protect the interests of investors in securities and regulating the securities market by such measures as it may think fit. Accordingly, the Portfolio Managers Regulations and the Intermediaries Regulations, have been framed by SEBI in the discharge of this statutory obligation. The role of the Portfolio Manager as a market intermediary is indeed very crucial, especially as a portfolio manager handles investments kept with him in fiduciary capacity. As envisaged in the '*fit and proper person*' criteria, SEBI has to take into account the financial integrity, honesty, good reputation and character of the applicant and also the persons who hold responsible positions in the applicant and/or are in a position to influence the decision making process. SEBI, therefore, has to take into account entities/individuals, who by virtue of their substantial shareholding in the companies controlling the applicant, are in a position to influence the activities of the applicant. Indeed such a determination becomes very vital and imperative for ensuring the integrity of securities market.
- 14.2 In view of the preceding paragraphs, I, therefore, have no hesitation in concluding that Sahara AMC does not comply with the eligibility criteria of being a '*fit and proper person*' in accordance with the Portfolio Managers Regulations read with the Intermediaries Regulations in view of the substantial controlling interest entailing significant influence over Sahara AMC, exercised by Shri Subrata Roy Sahara, through the Promoter Companies of that applicant.
- 14.3 Important facts such as prosecution proceedings, Detention Order, etc. pending against the persons ultimately controlling or influencing Sahara AMC, also cannot be ignored while considering its eligibility as a portfolio manager. Keeping Sahara AMC in the mainstream market after considering the antecedents of Shri Subrata Roy Sahara and some other companies of the Sahara group, may cause prejudice to the interests of investors and the safety and integrity of the securities market. I am, therefore, of the firm opinion that the applicant is not a '*fit and proper person*' to act as a Portfolio Manager in the Indian securities market also in view of the subsisting action against Shri Subrata Roy Sahara and companies of the Sahara group as detailed in paragraph 13.

**Order –**

- 15.1 Having regard to the above discussion, I, in exercise of the powers conferred upon me in terms of Section 19 of the SEBI Act read with Regulation 10 of the Portfolio Managers Regulations, find no reason to interfere with the SEBI Order dated February 27, 2015, and accordingly, reject the application for reconsideration, submitted by Sahara AMC.
- 15.2 All clients of Sahara AMC are hereby served noticed of this Order displayed on the website of SEBI – [www.sebi.gov.in](http://www.sebi.gov.in).

**Place: Mumbai**  
**Date: December 30, 2015**

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