

## **Sahara case : With 66 lakh investors, it's a public issue**

Written by B4M

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Mumbai : In the Sahara versus SEBI case pertaining to the jurisdiction of SEBI, counsel for the regulator Mr Arvind P Datar argued before the Securities Appellate Tribunal (SAT), that the Sahara group was trying to get out of the purview of the Securities Contract Regulation Act and hence out of SEBI's jurisdiction.

He said that the SEBI member had passed a proper order against Sahara group companies and appealed to SAT to uphold the impugned order.

He said that Sahara had tried to pass off the full prospectus (which contained both the price of security and the quantity) as a red herring prospectus. The RHP does not contain price and quantity and is used by companies to test the waters of the securities market using either price or quantity as a variable.

An issue constitutes a public issue if more than 50 people subscribe to it and since Sahara had raised Rs 5,000 crore from 66 lakh investors, it constituted a public issue, said Mr Datar.

He said that Sahara had promised to file the final prospectus after issue closure and issue would close only after Rs 20,000 crore was raised. Companies could not be open ended with respect to issue opening and closing dates as was happening in this case, he said.

### **Clear violation**

He said that Sahara could not have had any other means of financing their project worth Rs 20,000 crore as their capital and reserves put together totalled around Rs 10 lakh – a negligible sum when compared to the project outlay.

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He also said that Sahara had clearly violated SEBI's erstwhile DIP (Disclosure & Investor protection) guidelines and hence it automatically attracted SEBI's jurisdiction.

This was in spite of the fact that DIP guidelines were replaced by the Issue of Capital and Disclosure Requirements (ICDR) guidelines in 2009. The new did not obliterate the old guidelines, he said.

### **Pretext**

He further argued that this was a clear case of display of intention by conduct and not by proclamation. Contesting that SEBI derives its jurisdiction from statute and not by the place of filing of the final prospectus, he said that SEBI also had the mandate over all those companies which did everything that amounted to listing and professed not to list.

He said that the Sahara group was trying to use the pretext of a hybrid instrument to avoid coming under the SCRA (and hence under SEBI) even though its optionally fully convertible debenture (OFCD) had all the characteristics of a security which included transferability and marketability.

He concluded that Sahara which had more than twice the number of investors as that of the company with the largest number of shareholders but was yet to be regulated by SEBI, should be asked to refund Rs 4,985 crore as spelt out in the impugned order or else the consequences could be dangerous. courtesy : Business line