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# **THE SAHARA INDIA CASE: A LEGAL AND REGULATORY ANALYSIS OF UNREGULATED INVESTMENT SCHEMES IN INDIA**

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## **1. Introduction**

The **Sahara India Case** is one of the most significant legal and regulatory battles in India's financial history, highlighting the challenges of unregulated investment schemes and investor protection. The case revolves around Sahara India Pariwar, a conglomerate with interests in finance, real estate, media, and hospitality, which was accused by the **Securities and Exchange Board of India (SEBI)** of illegally raising funds from investors through **Optionally Fully Convertible Debentures (OFCDs)** without proper regulatory approval.

In 2011, SEBI ruled that **Sahara India Real Estate Corporation Ltd. (SIRECL)** and **Sahara Housing Investment Corporation Ltd. (SHICL)** had violated securities laws by mobilizing around **₹24,000 crores from nearly 30 million investors** without following SEBI's public issue regulations. The Supreme Court of India, in **Sahara India Real Estate Corporation Ltd. & Ors. v. SEBI & Anr. (2012)**, upheld SEBI's decision, ordering Sahara to refund the money to investors with interest. This case set a precedent in financial regulation by reinforcing SEBI's authority over unregulated fundraising activities and investor protection mechanisms.<sup>1</sup>

The **significance of the Sahara India Case** extends beyond just one company. It exposed the loopholes in India's financial regulatory framework, prompting reforms in securities law and stricter enforcement of investor protection measures. The case also underscored the risks associated with **unregulated collective investment schemes**, leading to amendments in laws like the **SEBI Act, 1992, and the Companies Act, 2013**. Moreover, it raised crucial questions about regulatory arbitrage, corporate governance, and the accountability of financial institutions operating outside the purview of standard oversight.

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<sup>1</sup> Astha Srivastava, *Exposing the 2010 Sahara India Pariwar Scam: An Analyse on the Investors Protection and Impact on Financial Market Regulations*, Lawful Legal, <https://lawfullegal.in/exposing-the-2010-sahara-india-pariwar-scam-an-analyse-on-the-investors-protection-and-impact-on-financial-market-regulations/>

This paper provides a **comprehensive legal and regulatory analysis** of the Sahara India case, examining its implications for unregulated investment schemes in India. It explores the regulatory gaps, judicial interventions, and policy reforms that have emerged in response to the case, shaping the future of financial regulation in the country.

## 2. Understanding Unregulated Investment Schemes

Unregulated investment schemes refer to financial arrangements that operate outside the direct oversight of regulatory authorities such as the Securities and Exchange Board of India (SEBI), the Reserve Bank of India (RBI), and the Insurance Regulatory and Development Authority of India (IRDAI). These schemes often present themselves as lucrative investment opportunities, promising high returns with minimal or no risk. However, they lack transparency, regulatory compliance, and legal safeguards, making them highly risky and prone to fraud. Such schemes primarily target individuals with limited financial literacy, luring them with unrealistic returns and misleading assurances of security.

Over the years, several types of unregulated investment schemes have emerged, each exploiting loopholes in financial regulations and gaps in investor awareness. Some of the most common types include:<sup>2</sup>

- 1. Ponzi Schemes** – These fraudulent schemes operate by using funds from new investors to pay returns to earlier investors, rather than generating legitimate profits. The scheme collapses when new investments dry up, leaving the majority of investors with losses.
- 2. Pyramid Schemes** – These are similar to Ponzi schemes but depend on recruiting new members instead of just collecting direct investments. Investors earn commissions for bringing in new participants, but since the structure is unsustainable, the scheme eventually fails when recruitment stops.
- 3. Unregistered Debentures and Bonds** – Some companies issue financial instruments like Optionally Fully Convertible Debentures (OFCDs) without obtaining necessary regulatory approvals from SEBI. Such instruments may appear legitimate but operate outside regulatory oversight, exposing investors to high risks. The Sahara case is a prime example, where the company raised over ₹24,000 crores from investors through unregistered OFCDs without following SEBI regulations.

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<sup>2</sup> Regulated vs. Unregulated Investment Products (India), IndiaP2P, <https://www.indiap2p.com/blogs/regulated-vs-unregulated-investment-products-india>

4. **Chit Funds and Multi-Level Marketing (MLM) Schemes** – While some chit funds are legally regulated under the Chit Funds Act, 1982, many operate informally without adequate safeguards, often leading to fraud. MLM schemes, on the other hand, promise quick financial gains through recruitment-based commissions, often evolving into pyramid schemes that collapse once recruitment slows. The Saradha Group scam (2013) in West Bengal is a notable example.
5. **Real Estate and Agricultural Investment Schemes** – Many unregulated schemes promise high returns on land or property investments, claiming appreciation or profits from agriculture projects. However, lack of transparency, forged land documents, and false promises often lead to investor losses. The PACL (Pearls Group) Scam (2014), which collected ₹49,100 crores from investors under a bogus land investment scheme, is a prime example.

Despite the presence of financial regulators, several loopholes in the legal and regulatory framework allow fraudulent schemes to flourish. Many companies exploit overlapping or unclear jurisdictions between SEBI, RBI, and other authorities, delaying enforcement actions. For instance, Sahara initially argued that its OFCDs were not "securities" and thus outside SEBI's jurisdiction. The lack of centralized oversight further complicates enforcement, as different investment schemes fall under different laws, leading to fragmented supervision. Even when fraudulent schemes are exposed, weak penalties and prolonged legal proceedings reduce the effectiveness of deterrence. The Sahara case dragged on for years before the Supreme Court finally ordered refunds. Poor investor awareness, particularly in rural areas, also contributes to the success of these schemes, as individuals fall prey to misleading advertisements and promises of guaranteed high returns.

India has witnessed several large-scale financial frauds due to these regulatory weaknesses. The Saradha Chit Fund Scam (2013) defrauded investors of over ₹2,500 crores across West Bengal, Assam, and Odisha. Similarly, the Rose Valley Scam (2015) raised ₹17,000 crores through unauthorized investment schemes, while the SpeakAsia fraud (2011) duped investors with a fake survey-based MLM scheme. One of the largest scams, PACL (Pearls Group) Scam (2014), involved the collection of ₹49,100 crores from investors under a bogus real estate scheme. These cases, including the Sahara India case, highlight the urgent need for stronger regulations, stricter penalties, and enhanced investor education to prevent fraudulent investment schemes from thriving.

### 3. The Sahara India Case: Background and Facts

The **Sahara India Pariwar**, founded by **Subrata Roy** in **1978** in **Gorakhpur**, grew into one of India's largest business conglomerates, with **diverse interests spanning finance, infrastructure, housing, media, entertainment, consumer merchandise, manufacturing, and information technology**. Headquartered in **Lucknow, India**, Sahara established a vast network of **4,799 establishments** under its umbrella. Among its key subsidiaries, **Sahara India Real Estate Corporation Limited (SIRECL)** and **Sahara Housing Investment Corporation Limited (SHICL)** focused primarily on acquiring and developing land for **residential housing projects** across the country. Despite its success, the Sahara Group's financial operations remained **shrouded in secrecy**, and concerns over its **fundraising methods and regulatory compliance** eventually led to one of India's most significant legal battles.

To sustain its operations and expand its real estate ventures, Sahara raised funds from the public through **Optionally Fully Convertible Debentures (OFCDs)**. These debentures, which could later be converted into equity shares, were issued by **SIRECL and SHICL** starting **April 25, 2008**, with the subscription period continuing until **April 13, 2011**. During this period, **approximately 30 million investors** subscribed to these OFCDs, contributing a total of **₹17,656 crores**. The company **classified these investments as a "Private Placement"**, claiming that they were **not subject to SEBI regulations** applicable to public offerings. However, given the **sheer number of investors involved**, the fundraising was **effectively a public issue in disguise**, violating SEBI's rules, which require companies raising funds from more than 50 investors to obtain SEBI approval and adhere to disclosure norms.<sup>3</sup>

Concerns regarding Sahara's financial operations had surfaced earlier, with **regulators suspecting that the company was functioning like a Ponzi scheme**, dependent on continuous inflows of new investments to sustain itself. In **2008**, the **Reserve Bank of India (RBI)** **banned Sahara India Financial Corporation from raising additional deposits**, forcing the group to find alternative fundraising mechanisms, ultimately leading to the **OFCD route**. The **Securities and Exchange Board of India (SEBI)** began investigating Sahara's **OFCD issuance in response to investor complaints**. In **November 2010**, **SEBI barred SIRECL and SHICL from further fundraising** through OFCDs, citing **violations of securities regulations**. Sahara defended its actions by arguing that OFCDs **did not fall under SEBI's**

<sup>3</sup> Manshu Garg, Sahara India vs SEBI: A Deep Study in Financial Compliance, LinkedIn, <https://www.linkedin.com/pulse/sahara-india-vs-sebi-deep-study-financial-compliance-manshu-garg-odvtc/>

jurisdiction, as they were private placements. However, the open-ended nature of the issuance, the massive investor base, and the continued fundraising over an extended period (some OFCD issues remained open for up to 10 years, raising ₹17,250 crores) strengthened SEBI's case against Sahara. Ultimately, the legal battle escalated to the Supreme Court of India, which ruled against Sahara, ordering it to return ₹24,000 crores, along with interest, to investors—a landmark decision in Indian financial regulation.

## 4. SEBI's Investigation and Regulatory Actions

### 4.1. SEBI's Role in the Case and Its Orders Against Sahara

The Securities and Exchange Board of India (SEBI) played a crucial role in investigating and taking action against Sahara India Pariwar for violating securities laws. The case first gained attention when Sahara planned an Initial Public Offering (IPO) for Sahara Prime City, which required the company to file a Red Herring Prospectus disclosing its financial details. During this review, K. M. Abraham, a SEBI official, identified irregularities in Sahara's financial operations, particularly in its issuance of Optionally Fully Convertible Debentures (OFCDs) through Sahara India Real Estate Corporation Limited (SIRECL) and Sahara Housing Investment Corporation Limited (SHICL). SEBI launched an investigation into these financial instruments and discovered that Sahara had raised over ₹17,656 crores from nearly 30 million investors under the guise of a private placement, thereby bypassing SEBI's public securities regulations.

In November 2010, SEBI issued a restraining order preventing SIRECL and SHICL from raising further funds through OFCDs, citing violations of disclosure and investor protection norms. Sahara, however, contested SEBI's jurisdiction, arguing that OFCDs were not securities and fell outside SEBI's regulatory scope. The dispute escalated through the Securities Appellate Tribunal (SAT) and ultimately reached the Supreme Court of India, which, in August 2012, ruled in favor of SEBI. The Supreme Court ordered Sahara to refund ₹24,000 crores to investors within 90 days, with SEBI overseeing the refund process.<sup>4</sup>

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<sup>4</sup> B.K. Dhyana, Role of SEBI in protecting investor rights and regulating infrastructure financing with special reference to Sahara India real estate corporation ltd v. SEBI, IJIRL, <https://ijirl.com/wp-content/uploads/2022/01/ROLE-OF-SEBI-IN-PROTECTING-INVESTOR-RIGHTS-AND-REGULATING-INFRASTRUCTURE-FINANCING-WITH-SPECIAL-REFERENCE-TO-SAHARA-INDIA-REAL-ESTATE-CORPORATION-LTD-V.-SEBI.pdf>

Despite the Supreme Court's order, **Sahara delayed compliance**, claiming that it had already repaid **93% of its investors** directly. In response, SEBI took **strong enforcement measures**, including:

- **Freezing Sahara's bank accounts and assets** to prevent further fund diversions.
- **Issuing a non-bailable warrant against Subrata Roy**, leading to his **arrest in March 2014** for non-compliance.
- **Managing the refund process by setting up a special SEBI-Sahara account**, where Sahara was required to deposit the owed funds.

#### **4.2. Legal Provisions Under the SEBI Act, 1992, and Securities Contracts (Regulation) Act, 1956**

SEBI's actions against Sahara were supported by various provisions under the **SEBI Act, 1992**, and the **Securities Contracts (Regulation) Act, 1956 (SCRA)**. These provisions granted SEBI the authority to regulate securities markets, protect investor interests, and take enforcement actions against violations.<sup>5</sup>

1. **Section 11<sup>6</sup> of the SEBI Act, 1992** – Provides SEBI with powers to **protect investors, regulate securities markets, and prevent fraudulent practices**. SEBI invoked this provision to issue its restraining orders against Sahara.
2. **Section 11A<sup>7</sup> of the SEBI Act, 1992** – Grants SEBI the authority to regulate **public issues of securities** and mandate compliance with disclosure requirements. SEBI used this to argue that Sahara's OFCDs should be treated as **public issues**.
3. **Section 11B<sup>8</sup> of the SEBI Act, 1992** – Allows SEBI to **pass directions and take punitive action** against entities violating securities regulations. This was used to **freeze Sahara's assets and prohibit further fundraising**.
4. **Section 55A<sup>9</sup> of the Companies Act, 1956** – Determines SEBI's jurisdiction over **public issues of securities**. Sahara **contested SEBI's authority**, arguing that its OFCDs were private placements, but the Supreme Court upheld SEBI's jurisdiction.

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<sup>5</sup> Deepika Sawhney, Sahara vs. SEBI-An In-Depth Analysis Of The Landmark Supreme Court Ruling, MONDAQ, <https://www.mondaq.com/india/shareholders/203796/sahara-vs-sebi-an-in-depth-analysis-of-the-landmark-supreme-court-ruling>

<sup>6</sup> Securities and Exchange Board of India Act, 1992, § 11

<sup>7</sup> Securities and Exchange Board of India Act, 1992, § 11A

<sup>8</sup> Securities and Exchange Board of India Act, 1992, § 11B

<sup>9</sup> The Companies Act, 2013, § 55A

5. **Section 73<sup>10</sup> of the Companies Act, 1956** – Requires companies issuing securities to more than 50 investors to list them on a stock exchange and comply with public disclosure norms. SEBI argued that Sahara violated this provision by targeting nearly 30 million investors while claiming a private placement.
6. **Section 28(1)(b)<sup>11</sup> of the Securities Contracts (Regulation) Act, 1956 (SCRA)** – Defines exemptions for convertible bonds from certain regulatory provisions. Sahara attempted to use this to argue that OFCDs were exempt from SEBI's oversight, but this argument was rejected by the Supreme Court.

These legal provisions were instrumental in establishing SEBI's authority over Sahara's OFCD issue, ensuring that companies raising large sums from investors cannot bypass regulatory scrutiny by misclassifying financial instruments.

#### 4.3. Challenges Faced by SEBI in Enforcing Compliance

Despite obtaining a Supreme Court order in 2012, SEBI faced significant challenges in enforcing compliance against Sahara India Pariwar due to legal delays, lack of investor records, and Sahara's resistance. One of the primary obstacles was Sahara's legal maneuvers and delay tactics, as the company persistently contested SEBI's jurisdiction in multiple courts, leading to years of litigation. Even after the Supreme Court's final ruling, Sahara delayed depositing funds, arguing that it had already repaid most investors, which further prolonged the enforcement process.

A major hurdle in SEBI's compliance efforts was the challenge of identifying and refunding investors. Upon investigation, SEBI found that Sahara's investor records were incomplete and lacked proper documentation of investor identities. In 2014, SEBI advertised in over 144 newspapers, inviting Sahara's investors to claim refunds, yet only 4,600 investors came forward, raising concerns about the authenticity of Sahara's investor base. Furthermore, delays in fund recovery and distribution complicated the process. Although Sahara was required to deposit ₹24,000 crores in SEBI's account, by 2014, only ₹16,000 crores had been deposited. SEBI struggled to refund the money due to verification issues, and as of 2018, only ₹64 crores had been refunded, as the majority of investors failed to claim their funds.

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<sup>10</sup> The Companies Act, 2013, § 73

<sup>11</sup> The Securities Contracts (Regulation) Act, 1956, § 28(1)(b)

The enforcement process escalated when **Subrata Roy, Sahara's chairman, was arrested in March 2014** for failing to comply with the Supreme Court's refund orders. Despite spending **two years in jail, Sahara continued to evade full compliance**, failing to provide complete documentation of its investor base or fulfill the **court-ordered repayments**. Another challenge arose from **Sahara's claims of double payment and taxation issues**. The company argued that it had **already repaid 95% of investors**, and SEBI's demand for additional refunds would lead to **double payment**. Sahara also claimed to have **paid ₹725.97 crores as TDS (Tax Deducted at Source) to the Income Tax Department**, which confirmed the **existence of some investors**, contradicting SEBI's assertion that most investors could not be located.<sup>12</sup>

Additionally, **logistical challenges and documentation disputes** created further barriers. In an attempt to prove investor repayments, **Sahara sent 127 trucks loaded with investor records to SEBI's office in 2013**. However, **SEBI rejected a portion of these documents**, citing **inconsistencies and late submission**. Despite these hurdles, SEBI remained **committed to enforcing compliance**, ensuring that **Sahara could not escape regulatory accountability**. The case set a **major precedent in Indian financial regulation**, reinforcing **SEBI's authority in monitoring large-scale unregulated financial activities** and strengthening **investor protection mechanisms**.

## 5. Supreme Court Judgment (2012) and Legal Consequences

### 5.1. Key Highlights of the Supreme Court Ruling

The Supreme Court's judgment in **Sahara vs SEBI (2012)** was a **landmark decision** that provided legal clarity on **SEBI's jurisdiction, the classification of Optionally Fully Convertible Debentures (OFCDs), and investor protection laws**. The ruling reaffirmed **SEBI's authority to regulate securities markets and prevent fraudulent fundraising practices**.

One of the most crucial aspects of the judgment was the **classification of OFCDs as securities** under the **Companies Act, SEBI Act, and the Securities Contracts (Regulation) Act (SCRA)**. Despite being hybrid instruments, the Court determined that **OFCDs had the characteristics of securities and should be regulated accordingly**. The Court also **rejected Sahara's claim that OFCDs were private placements**, ruling that since they were **issued to more than 50 investors**, they qualified as a **public offer under Section 67(3) of the**

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<sup>12</sup> *Ibid at 5.*

**Companies Act.** As a result, Sahara was found to have **violated SEBI's public issue regulations by not obtaining prior approval, failing to list the securities on a recognized stock exchange, and not complying with disclosure norms.**<sup>13</sup>

The **Supreme Court upheld SEBI's jurisdiction**, stating that **there was no conflict between SEBI's regulatory powers and the Companies Act**, as SEBI's role was **complementary to corporate governance laws**. Additionally, the Court dismissed Sahara's argument that OFCDs, being convertible bonds, were **exempt from the Securities Contracts (Regulation) Act (SCRA)**. It clarified that **debentures are distinct from convertible bonds and fall under SEBI's oversight**.

## **5.2. Directions Given to Sahara to Refund ₹24,000 Crores**

As part of the ruling, the Supreme Court issued **several critical directives** to ensure investor protection and regulatory compliance.<sup>14</sup>

### **1. Full Refund with Interest**

- Sahara was ordered to **refund ₹24,000 crores** collected from **nearly 30 million investors**, along with **15% interest per annum** from the date of issuance until repayment.
- SEBI was tasked with overseeing the **refund process** to ensure that **genuine investors received their money**.

### **2. SEBI's Authority to Enforce Compliance**

- The **Court granted SEBI additional enforcement powers**, allowing it to **seize Sahara's assets, freeze bank accounts, and take legal action** in case of non-compliance.
- SEBI was directed to **manage a dedicated refund account**, where Sahara was required to deposit funds for distribution to investors.

### **3. Non-Bailable Warrant for Non-Compliance**

- When **Sahara failed to comply** with the refund order, the **Supreme Court issued a non-bailable warrant** against **Subrata Roy and key Sahara officials**.
- This action reinforced the **Court's commitment to strict enforcement** and signaled that **corporate non-compliance would not be tolerated**.

<sup>13</sup> AIR 2012 SUPREME COURT 3829

<sup>14</sup> Aishwarya Agrawal, Sahara vs SEBI, LAW BHOOMI, <https://lawbhoomi.com/sahara-vs-sebi/>

## 6. Subrata Roy's Arrest and Contempt of Court Proceedings

### 6.1. Failure of Sahara to Comply with the Supreme Court Order and Legal Proceedings

Despite the Supreme Court's 2012 ruling directing Sahara to refund ₹24,000 crores to its investors, the company persistently delayed compliance. Sahara claimed that it had already repaid 93% of its investors directly, and that SEBI's demand for additional refunds would result in double payment. However, SEBI contested these claims, stating that Sahara had failed to provide verifiable records of repayments.

To facilitate the refund process, the Supreme Court directed Sahara to deposit the amount with SEBI, which would then distribute the money to eligible investors. However, Sahara made only partial payments, failing to meet the deadlines set by the Court. By 2014, Sahara had deposited only ₹5,120 crores, a fraction of the total amount owed. SEBI, unable to trace many investors due to missing or incomplete records, raised concerns that Sahara's investor base might have been artificially inflated to evade regulatory scrutiny.<sup>15</sup>

Sahara's repeated non-compliance led SEBI to petition the Supreme Court for strict enforcement measures. In response, the Court summoned Sahara's Chairman, Subrata Roy, and other top executives to provide explanations for their failure to comply with the refund order. When Sahara continued to delay payments and failed to provide a satisfactory repayment plan, the Court initiated contempt proceedings against Subrata Roy and his company's directors.

On February 26, 2014, the Supreme Court issued a non-bailable warrant against Subrata Roy for failing to appear in court despite multiple summonses. A week later, on February 28, 2014, he was arrested in Lucknow by the Uttar Pradesh police and taken into custody. Following his arrest, Roy was presented before the Supreme Court, which ordered that he remain in judicial custody at Tihar Jail, Delhi, until Sahara complied with the refund directives.<sup>16</sup>

Sahara's legal team repeatedly sought bail, arguing that Roy's continued detention was unfair, considering Sahara's ongoing efforts to raise funds. However, the Supreme Court was

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<sup>15</sup> Astha Srivastava, "Exposing the 2010 Sahara India Pariwar Scam: An Analyse on the Investors Protection and Impact on Financial Market Regulations", Lawful Legal, <https://lawfullegal.in/exposing-the-2010-sahara-india-pariwar-scam-an-analyse-on-the-investors-protection-and-impact-on-financial-market-regulations/>

<sup>16</sup> S.N.Thyagarajan, "Subrata Roy's encounter with Supreme Court: From Tihar jail to SEBI's massive recovery", Moneycontrol, <https://www.moneycontrol.com/news/trends/legal/subrata-roys-encounter-with-supreme-court-from-tihar-jail-to-sebis-massive-recovery-11750381>

unconvinced, emphasizing that Roy's arrest was a direct consequence of his defiance of court orders.

Several key legal proceedings followed:

- March 2014: The Supreme Court ordered Sahara to deposit ₹10,000 crores to secure Roy's release—₹5,000 crores in cash and ₹5,000 crores in bank guarantees. Sahara failed to meet this requirement.
- May 2014: Sahara attempted to negotiate a phased repayment plan, but SEBI and the Court demanded a more concrete proposal.
- August 2014: Sahara submitted a new plan, but the Supreme Court found it insufficient and refused to grant bail.

Roy remained in jail for over two years, marking one of the most high-profile corporate incarcerations in India. His detention underscored the Supreme Court's firm stance on regulatory compliance and its commitment to protecting investors from fraudulent schemes.

## 6.2. Attempts by Sahara to Raise Money for Repayment

During Roy's imprisonment, Sahara made several unsuccessful attempts to raise funds for the ₹10,000 crore bail amount and the overall refund obligation:<sup>17</sup>

- Asset Liquidation – Sahara proposed selling some of its prime assets, including luxury hotels like The Plaza (New York), Grosvenor House (London), and Sahara Star (Mumbai). However, legal restrictions and market conditions delayed these sales.
- Loan Arrangements – Sahara approached financial institutions and private investors for loans, but potential lenders hesitated due to regulatory uncertainties and the company's tarnished reputation.
- Investor Contributions – Sahara repeatedly claimed that existing investors were willing to forgo refunds or reinvest, but these claims lacked substantiating evidence.

In May 2016, after multiple failed repayment attempts, the Supreme Court granted Roy conditional bail upon Sahara depositing an initial instalment of ₹200 crores. Subsequent extensions allowed Sahara to continue making staggered payments, but full compliance remained elusive.<sup>18</sup>

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<sup>17</sup> Aniket Gupta, "The Sahara Scam", Business Domain, <https://businesshistory.domain-b.com/focus/the-sahara-scam>

<sup>18</sup> "Sahara Group on 'Scam 2010 - The Subrata Roy Saga': An abusive and grossly condemnable act", The Economic Times, <https://economictimes.indiatimes.com/news/india/sahara-group-on-scam-2010-the-subrata-roy-saga-an-abusive-and-grossly-condemnable-act/articleshow/110229691>

By 2017, Sahara had managed to raise and deposit ₹11,000 crores with SEBI, yet a large portion of the required funds was still outstanding. The refund process continued at a slow pace due to difficulties in verifying investors and legal battles over Sahara's remaining assets.<sup>19</sup>

The arrest of Subrata Roy and the contempt proceedings against Sahara marked a turning point in India's regulatory enforcement history. While the case highlighted significant gaps in financial regulation and enforcement, it also demonstrated the judiciary's willingness to take strict action against non-compliant corporate entities. However, challenges in fund recovery and investor identification remain ongoing, reflecting broader issues in India's financial regulatory framework.

## 7. Regulatory Reforms Post-Sahara Case

The Sahara India case exposed significant loopholes in India's financial regulatory framework, particularly in the oversight of unregulated investment schemes. The prolonged litigation and challenges in recovering investor funds underscored the need for stronger regulatory mechanisms to prevent fraudulent financial practices. In response, the Indian government and regulatory bodies such as SEBI and RBI implemented several reforms to strengthen investor protection, improve financial oversight, and prevent similar frauds in the future.

### 7.1. Strengthening of SEBI's Authority Over Financial Instruments

The Sahara case reaffirmed SEBI's jurisdiction over hybrid financial instruments, such as Optionally Fully Convertible Debentures (OFCDs), and paved the way for the regulator to expand its authority over similar investment schemes. Some key developments include:

#### 1. Expanded Regulatory Scope:

- The Supreme Court ruling in the Sahara case (2012) confirmed SEBI's power to regulate any security issued to 50 or more investors, regardless of how it is classified by the issuing entity.
- SEBI now has increased authority over corporate bonds, debentures, and collective investment schemes (CIS), ensuring that companies do not exploit regulatory loopholes by misclassifying financial instruments.

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<sup>19</sup> Sukhpreet Monga, "Sahara Scam: Uncovering the India's Biggest Financial Fraud Case", Plutus Education, <https://plutuseducation.com/blog/sahara-scam/>

## 2. The Securities Laws (Amendment) Act, 2014:

- **Enhanced Enforcement Powers:** Various amendments were made in the Chapter IV of the SEBI Act, 1992<sup>20</sup> i.e. Powers and Functions of the Board, granting SEBI greater authority to conduct investigations, freeze bank accounts, attach properties, and recover investor funds from entities violating securities laws.
- **New Penalty Mechanisms:** Under Section 15HA<sup>21</sup>, SEBI can impose higher penalties for misleading financial disclosures, unregistered fundraising activities, and non-compliance with SEBI's orders.

## 3. Increased Surveillance on Public Fundraising:

- Section 42<sup>22</sup> of the Companies Act, 2013, was amended to prevent private placements from bypassing SEBI's approval if they involve more than 50 investors.
- SEBI made mandatory disclosures and stricter listing norms for companies raising public funds to ensure greater transparency.

These reforms ensured that financial instruments like OFCDs and other debt securities are brought under strict regulatory scrutiny, reducing the chances of companies evading SEBI's oversight.

## 7.2. Introduction of the Banning of Unregulated Deposit Schemes Act, 2019

One of the most significant legislative responses to the Sahara case was the enactment of the Banning of Unregulated Deposit Schemes Act, 2019 (BUDS Act, 2019). The Act was introduced to curb fraudulent deposit-taking activities and protect investors from Ponzi schemes and unregulated financial instruments.

### Key Features of the Act:

- **Prohibition of Unregulated Deposits:**
  - **Section 3(a):** Declares that all Unregulated Deposit Schemes are banned from the commencement of the Act. This prevents individuals and companies from collecting public deposits without proper registration and oversight by financial regulators such as SEBI, RBI, or IRDAI.

<sup>20</sup> Securities and Exchange Board of India Act, 1992, § 11

<sup>21</sup> Securities and Exchange Board of India Act, 1992, § 15HA

<sup>22</sup> The Companies Act, 2013, § 42

- **Section 3(b):** Prohibits deposit takers from directly or indirectly promoting, operating, or advertising any Unregulated Deposit Scheme. This ensures that fraudulent entities cannot mislead investors through deceptive promotions.<sup>23</sup>
- **Section 5:** Bans any person or entity from knowingly making false, deceptive, or misleading statements to induce individuals into investing in Unregulated Deposit Schemes.<sup>24</sup>
- **Stronger Punishments and Penalties:**
  - **Section 21(1):** Any deposit taker who solicits deposits in violation of Section 3 faces imprisonment of not less than one year up to five years and a fine not less than ₹2 lakh up to ₹10 lakh.
  - **Section 21(2):** If a deposit taker accepts deposits in contravention of Section 3, the punishment increases to not less than two years up to seven years of imprisonment and a fine not less than ₹3 lakh up to ₹10 lakh.
  - **Section 21(3):** If a deposit taker fraudulently defaults in repayment of deposits or promised services, the penalty is not less than three years up to ten years of imprisonment and a fine of not less than ₹5 lakh, which can go up to twice the total amount collected from investors.<sup>25</sup>
  - **Section 23:** Any person violating Section 5 shall face imprisonment of not less than one year up to five years and a fine up to ₹10 lakh.<sup>26</sup>
- **Central Database for Information on Deposit Takers:**
  - **Section 9:** The Central Government can designate an authority to create and maintain an online database of all deposit takers in India. This helps regulators track financial entities and detect fraudulent schemes early.<sup>27</sup>
  - **Section 10:** Requires all deposit takers to report their business activities to the designated authority. If a company is suspected of operating an unregulated deposit scheme, regulators can demand relevant records to assess compliance.<sup>28</sup>
  - **Section 11:** Mandates information sharing between regulatory bodies, law enforcement agencies, and banks. If a bank suspects a client is involved in an

<sup>23</sup> Banning of Unregulated Deposit Schemes Act, 2019, § 3

<sup>24</sup> Banning of Unregulated Deposit Schemes Act, 2019, § 5

<sup>25</sup> Banning of Unregulated Deposit Schemes Act, 2019, § 21

<sup>26</sup> Banning of Unregulated Deposit Schemes Act, 2019, § 23

<sup>27</sup> Banning of Unregulated Deposit Schemes Act, 2019, § 9

<sup>28</sup> Banning of Unregulated Deposit Schemes Act, 2019, § 10

unregulated deposit scheme, it must report it to the Competent Authority for investigation.<sup>29</sup>

- **Improved Enforcement Mechanism and Restitution to Depositors:**

- **Section 12:** Depositors' claims have first priority over all other debts, including government taxes and dues, ensuring investors receive refunds before any other liabilities are settled.<sup>30</sup>
- **Section 13-15:** Provides for attachment and sale of assets of deposit takers to recover funds for depositors. The Competent Authority must secure a court order to confirm the attachment and conduct sales.<sup>31</sup>
- **Section 31:** Empowers police officers, with authorization from a Superintendent of Police, to enter, search, seize records or property, and detain individuals suspected of engaging in unregulated deposit schemes. If obtaining prior authorization risks evidence concealment or offender escape, officers may conduct searches at any time after recording their reasons in writing. Additionally, authorities can freeze bank accounts, deposits, or securities linked to illegal deposit schemes, with such freezes limited to 30 days unless extended by a Designated Court.<sup>32</sup>

The BUDS Act, 2019, was a direct response to high-profile financial frauds like the Sahara case, Saradha chit fund scam, and PACL scam. It strengthened investor protection laws and improved regulatory coordination between SEBI, RBI, and other financial regulators.

## 8. Conclusion

The Sahara India case is a landmark in India's financial and regulatory history, highlighting the risks posed by unregulated investment schemes and the challenges faced by regulatory authorities in enforcing compliance. The case underscored significant loopholes in financial oversight, particularly in the classification and regulation of financial instruments like Optionally Fully Convertible Debentures (OFCDs). It also reaffirmed SEBI's authority in safeguarding investors and preventing companies from exploiting regulatory gaps.

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<sup>29</sup> Banning of Unregulated Deposit Schemes Act, 2019, § 11

<sup>30</sup> Banning of Unregulated Deposit Schemes Act, 2019, § 12

<sup>31</sup> Banning of Unregulated Deposit Schemes Act, 2019, § 13

<sup>32</sup> Banning of Unregulated Deposit Schemes Act, 2019, § 31

The Supreme Court's 2012 ruling against Sahara set an important precedent, reinforcing the need for transparency, investor protection, and strict regulatory enforcement. However, the prolonged litigation, Sahara's repeated defiance of court orders, and the challenges in refunding investors revealed systemic inefficiencies in India's financial regulatory framework. The arrest of Subrata Roy in 2014 further emphasized the judiciary's commitment to holding corporate entities accountable, but the delays in asset liquidation and investor reimbursements exposed limitations in enforcement mechanisms.

In response to the Sahara case, India witnessed regulatory reforms, including the Securities Laws (Amendment) Act, 2014, which enhanced SEBI's powers to attach properties and recover funds from defaulters. Additionally, the Banning of Unregulated Deposit Schemes Act, 2019 (BUDS Act) was introduced to prevent fraudulent investment schemes and ensure stricter penalties for financial misconduct. While these reforms represent progress, challenges remain in cross-agency coordination, investor awareness, and regulatory enforcement.

To prevent future financial frauds, India must focus on enhancing surveillance mechanisms, streamlining regulatory oversight, and strengthening investor protection measures. Ensuring faster resolution of financial fraud cases, improving inter-agency collaboration, and increasing financial literacy will be critical in safeguarding the interests of investors and maintaining confidence in the financial system.

The Sahara case serves as both a cautionary tale and a catalyst for reform—emphasizing the importance of regulatory vigilance, corporate accountability, and a robust legal framework in preventing large-scale investment frauds in India.