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(2023) 04 SEBI CK 0006

In the Securities Appellate Tribunal Mumbai

Case No : Appeal No. 271 Of 2023

Fastmoney Advisory Services LLP And Others — APPELLANT

Vs

Securities And Exchange Board Of India — RESPONDENT

Date of Decision : 10-04-2023

Acts Referred:

Citation : (2023) 04 SEBI CK 0006

Hon'ble Judges : Tarun Agarwala, Presiding Officer;Meera Swarup, Technical Member

Bench : Division Bench

Advocate : Vedchetan Patil, Sumit Rai, Manish Chhangani, Samreen Fatima, Sumit Yadav

Final Decision : Partly Allowed

Judgement

Tarun Agarwala, Presiding Officer

1. The appellants have challenged the order dated December 20, 2022 passed by the Chief General Manager of Securities and Exchange Board of India ('SEBI' for short) directing the appellants to refund the money to the investors and further imposed a penalty of Rs. 15 lakh for carrying out investment advisory services without being registered under Regulation 3 of the SEBI (Investment Advisers) Regulations, 2013 ('IA Regulations' for short).

2. The facts leading to the filing of the present appeal is, pursuant to a complaint, SEBI examined the Research Analyst activities of the appellants which was being carried out in the nature and style of Fastmoney Advisory Services. In this regard a notice dated November 24, 2017 was issued requiring the appellants to furnish certain information. In response to the aforesaid notice the appellants replied vide their letter dated November 28, 2017 and November 29, 2017 admitting that they had not obtained any registration as a Research Analyst and that they will obtain the registration upon filing an appropriate application. Subsequently, a registration as a Research Analyst was granted on July 3, 2019

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in the name of M/s. Financial Leader Advisory Services.

3. On September 2, 2021 SEBI issued a notice contending that the appellants were offering various financial products / services which were in the nature of investment advisory services without getting itself registered as an investment adviser under the IA Regulations. Since no satisfactory reply was received a show cause notice dated June 30, 2022 was issued to show cause as to why appropriate action should not be taken for carrying out advisory services in the name of Fastmoney Advisory Services LLP without getting itself registered under the IA Regulations.

4. The authority after considering the reply and material evidence on record found that the appellants were carrying out investment advisory services without getting themselves registered under the IA Regulations. The authority found that the activities which the appellants were carrying were in the nature of investment advisory services for which the appellants were required to get themselves registered under 3(1) of the IA Regulations. Since the same was not done the authority directed the appellants to refund the money collected from the investors and further imposed a penalty of Rs. 15 lakh.

5. We have heard Shri Vedchetan Patil, the learned counsel for the appellant and Shri Sumit Rai, the learned counsel for the responded.

6. The learned counsel for the appellants contended that the show cause notice was issued belatedly and therefore on the ground of inordinate delay the proceedings should be quashed. It was contended that initially a notice was issued in 2017 to which they had replied and therefore the issuance of show cause notice on September 2, 2022 was belated. In support of his contention the appellants has relied upon a decision of this Tribunal in Yatin Pandya HUF vs SEBI, Appeal no. 719 of 2021 decided on March 24, 2022 wherein the proceedings were quashed on the ground of inordinate delay.

7. In our opinion there is no delay in the initiation of the proceedings. The first notice that was issued to the appellants was in 2017 was regarding carrying on business as a Research Analyst by the appellants without getting itself registered under the IA Regulations. The present show cause notice dated September 2, 2021 was issued pursuant to a show cause notice dated September 2, 2021 in which the appellants were intimated that they are carrying on investment advisory services without getting themselves registered under the IA Regulations. Since no satisfactory reply was received the show cause notice was issued on September 2, 2021. In our opinion there is no delay in the initiation of the proceedings.

8. The contention of the appellants that they are not carrying out investment advisory services is patently erroneous and cannot be accepted. There is ample evidence on record to show that the appellants were carrying out investment advisory services. We find that the appellants had executed an agreement dated October 28, 2015 wherein the principal activities showed stock / investment

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advisory services including financial consultancy. The website of the appellants made claims that the appellants were providing stock advisory to its clients by offering various packages and levying fees on monthly / quarterly / half-yearly / yearly basis ranging from Rs. 6,000 to Rs. 4,50,000 towards advisory services. The website claimed the appellants as a leading stock advisory company and having a good track record in the financial service industry. The website also provided profit assurance and advised clients to earn more money in a short time. We find that the appellants represented to the public at large that they are an experienced investment adviser and were engaged in the business of providing investment advisory services for a fee.

9. Admittedly, the appellants were carrying out investment advisory services without being registered under Regulation 3 of the IA Regulations and consequently direction of the authority to refund the amount to the investors cannot be faulted.

10. The learned counsel for the appellant contended that the imposition of penalty was harsh and excessive. Considering the peculiar facts and circumstances in the present case coupled with the fact that a direction to refund the money as also passed, we find that the penalty of Rs. 15 lakh is excessive. No reason has been given as to why the amount of Rs. 15 lakh was imposed.

11. For the reasons stated aforesaid, while affirming the directions passed by the authority in paragraph 32 we modify the direction in paragraph 32(k) and reduce the penalty from Rs. 15 lakh to Rs. 5 lakh. The appeal is partly allowed.

12. This order will be digitally signed by the Private Secretary on behalf of the bench and all concerned parties are directed to act on the digitally signed copy of this order.

Certified copy of this order is also available from the Registry on payment of usual charges.

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