(2023) 03 SEBI CK 0051

In the Securities Appellate Tribunal Mumbai

Case No : Appeal No. 270 Of 2023

Mehul Pravinbhai Jiyani APPELLANT

Vs

Securities And Exchange Board Of India RESPONDENT

Date of Decision : 28-03-2023

Acts Referred:

Securities And Exchange Board Of India (Investment Advisers) Regulations, 2013 — Regulation 3(1)
Securities And Exchange Board Of India Act, 1992 — Section 12(1)

Citation : (2023) 03 SEBI CK 0051

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

Bench : Division Bench

Advocate : Abhishek Mishra, Ravishekhar Pandey, Shefali Shankar, Rasika Ghate, Nishit Dhruva

Final Decision : Dismissed

Judgement

Tarun Agarwala, Presiding Officer

1. The present appeal has been filed against the order dated December 30, 2022 passed by the Whole Time Member (‘WTM’ for short) of the Securities and Exchange Board of India (‘SEBI’ for short) directing the appellant to refund the amount collected from the investors within three months in respect of its unregistered investment advisory activities and further restrained the appellant from buying, selling or otherwise dealing in the securities market for a period of three years or till the expiry of three years from the date of refund of the amount to the investors.

2. The facts leading to the filing of the present appeal is, that the investigation was started by SEBI on the basis of a complaint. Upon examination, the matter was found that the appellant was found to be carrying out investment advisory activities without obtaining a certificate of registration. Accordingly, a show cause notice dated September 29, 2022 was issued alleging that the appellant was

carrying out investment advisory activities without obtaining a certificate of registration in violation of the provisions of Section 12(1) of the SEBI Act read with Regulation 3(1) of the SEBI (Investment Advisers) Regulations, 2013 ('Investment Advisers Regulations' for short).

3. After considering the reply and the material evidence on record the WTM found that appellant was carrying out investment advisory services. The WTM found that the said investment advisory services was being carrying out without obtaining registration under the Investment Advisers Regulations.

4. We have heard Shri Abhishek Mishra, CS and Shri Ravishekhar Pandey, the learned counsel along with Ms. Shefali Shankar, Ms. Rasika Ghate and Shri Nishit Dhruva, the learned counsel for the respondent.

5. The only submission made by the appellant was that he was not carrying out any investment advisory services and that he was offering services relating to stock market data and research on listed companies for which no registration was required. In this regard we have perused the impugned order and we find that the WTM had dwelt in length in coming to a conclusion that appellant was carrying on business which was in the nature of investment advisory services. The WTM found that the website of the appellant clearly indicated that he was projecting stock tips under various categories and that were offering prospective investors, various subscription packages upon charging different amount for different services. The WTM further found that the appellant was also offering guaranteed returns which amounted to offering assured returns. The WTM accordingly came to a conclusion that the appellant was offering tips relating to shares, bullion, futures and options and such tips / recommendations were in the nature of investment advisory services and was not in the nature of research analysis.

6. Nothing has been pointed out by the appellant nor has any evidence been brought on record to show that appellant was only offering services relating to stock market data and was not carrying out investment advisory services.

7. In view of the aforesaid, we do not find any error in the impugned order and is dismissed with no order as to costs.

8. 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.

