(2023) 04 SEBI CK 0030

In the Securities Appellate Tribunal Mumbai

Case No : Appeal No. 234 Of 2022

M/S Cash Cow Broking And Advisory Solutions And Others APPELLANT

Vs

Securities And Exchange Board Of India RESPONDENT

Date of Decision : 27-04-2023

Acts Referred:

Securities And Exchange Board Of India (Investment Advisers) Regulations, 2013 — Regulation 3

Citation : (2023) 04 SEBI CK 0030

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

Bench : Division Bench

Advocate : Gaurav Bandi, Anubha Rastogi, 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 January 18, 2022 passed by the Whole Time Member (‘WTM’ for short) of the Securities and Exchange Board of India (‘SEBI’ for short) holding that the appellants were engaged in investment advisory services without obtaining a certificate of registration under Regulation 3 of the SEBI (Investment Advisers) Regulations, 2013 (‘IA Regulations’ for short).

2. We have heard Shri Gaurav Bandi, the learned counsel for the appellants and Ms. Anubha Rastogi assisted by Shri Ravishekhar Pandey, Ms. Shefali Shankar, Ms. Rasika Ghate and Shri Nishit Dhruva, the learned counsel for the respondent.

3. The learned counsel for the appellants urged that the WTM has exceeded it powers in directing refund of the amount collected and therefore the order is liable to be set aside. It was also urged that apart from investment advisory services the appellants were also providing stock broking and internet services

and therefore the entire amount collected by the appellants from these three services have been directed to be refunded which is erroneous. In support of his submissions the learned counsel for the appellant has placed reliance on a decision of this Tribunal in Anirudh Sethi vs SEBI, Appeal no. 303 of 2018 decided on July 29, 2021. It was, thus, urged that direction should be issued to segregate the amount collected by the appellant from investment advisory services, stock broking and internet services.

4. Having heard the learned counsel for the parties we find that admittedly the appellants were carrying on investment advisory services without obtaining a registration under Regulation 3 of the IA Regulations and therefore to that extent the order of the WTM does suffer from any error of law.

5. The contention that WTM did not have powers to pass an order of refund is wholly erroneous. Directions under 11 and 11B can be issued read with IA Regulations and ICDR Regulations which provides for refund of the amount collected to the investors. The argument so raised is, therefore, erroneous.

6. It was urged that the direction to refund the amount by the WTM is erroneous. In this regard we do find that the appellants have alleged that they were carrying on business of investment advisory services, stock broking and internet services. In this regard the appellants have placed a certificate of a Chartered Accountant showing bifurcation of the amount collected under the three heads. Without going into the veracity of the certificate issued by the Chartered Accountant, we are of the opinion that the directions to refund the entire amount collected by the appellants is subject to further scrutiny by the WTM.

7. In this regard we direct the appellants to file an appropriate application on an affidavit within four weeks from today submitting proof of the amounts collected under investment advisory services, stock broking and internet services along with evidence. Such application shall be considered by the WTM and appropriate orders shall be passed within six weeks thereafter.

8. We find that by an interim order we had directed the appellants to deposit a sum of Rs. 30 lakh which has not been deposited till date. The appellants, therefore, have not complied with the directions of this Tribunal and therefore equity is not in their favour. However, the facts remains that the amount collected by the appellants towards investment advisory services is required to be calculated and refunded to the investors. Thus, we direct the appellants that such application so filed shall be accompanied by a deposit of Rs. 30 lakh as a condition precedent. If the amount is not deposited the application will not be entertained by the WTM.

9. In view of the admitted fact that the appellants were carrying on investment advisory services without getting itself registered, the appeal fails and is dismissed to that extent.

10. 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.

