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(2023) 12 SEBI CK 0020

In the Securities Appellate Tribunal Mumbai

Case No : Appeal No. 877 Of 2023

M/s. Restock Research — APPELLANT

Vs

Securities And Exchange Board Of India — RESPONDENT

Date of Decision : 11-12-2023

Acts Referred:

Securities And Exchange Board Of India (Prohibition Of Fraudulent And Unfair Trade Practices Relating To Securities Market) Regulations, 2003 — Regulation 3, 4
Securities And Exchange Board Of India (Investment Advisers) Regulations, 2013 — Regulation 3, 3(1)
Securities And Exchange Board Of India Act, 1992 — Section 12(1), 15HA, 15HB

Citation : (2023) 12 SEBI CK 0020

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

Bench : Division Bench

Advocate : CS Abhishek Mishra, Dhruti Kapadia, Manish Chhangani, Sumit Yadav, Abhay Chauhan, Atul Kumar Agrawal

Final Decision : Dismissed

Judgement

Tarun Agarwala, Presiding Officer

1. The present appeal has been filed against the order of the Chief General Manager ("CGM" for convenience) of the Securities and Exchange Board of India dated July 31, 2023 wherein the appellant has been directed to refund as sum of Rs. 10,72,747/- (Rupees Ten Lakh Seventy Two Thousand Seven Hundred Forty Seven Only) collected towards advisory services from its clients. The appellant has also been restrained from accessing the securities market for a period of two years and has also been penalized a sum of Rs. 6 lakhs under Section 15HA and 15HB of the SEBI Act.

2. The facts leading to the filing of the present appeal is, that the appellant applied for registration as a Research Analyst on August 26, 2021. While the application was under process the respondent upon examination of the activities

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conducted by the appellant found that he was carrying on unauthorizedly investment advisory activities through a website under the name and style of Restock Research without obtaining a registration under the SEBI (Investment Advisors) Regulations, 2013 ("IA Regulations").

3. Accordingly a show cause notice dated May 04, 2023 was issued to show cause as to why appropriate action should not be taken for violation of Section 12(1) of the SEBI Act read with Regulation 3(1) of the IA Regulations. The CGM after considering the material evidence on record found that the appellant was carrying on investment advisory services since December 2020 and had collected a sum of Rs. 10,72,747/-from its clients without getting itself registered under the IA Regulations. The CGM accordingly imposed the penalties as stated aforesaid.

4. We have heard CS Abhishek Mishra, for the appellant and Ms. Dhruti Kapadia, the learned counsel for the respondent.

5. The learned counsel submitted that the applicant had applied for registration under the relevant regulations and did not know that he cannot carry on activities until and unless he was registered. The learned counsel contended that under a mistaken notion the appellant started its investment advisory services pending registration of his application.

6. The argument of the appellant appears to be attractive but the same cannot be accepted for the simple reason that the appellant had applied for registration as a Research Analyst on August 26, 2021 whereas the evidence on record indicates that the appellant was carrying on investment advisory services under the name and style of Restock Research from December 2020 onwards and had also collected a sum of Rs. 10,72,747/-from his clients while providing different packages of investment strategies. We also find that the website through which the appellant was carrying out investment advisory services also indicated that the appellant was registered with SEBI which was totally false and gave a wrong picture to the investors.

7. Thus, we are of the opinion, that the appellant was carrying out investment advisory services without getting itself registered under Regulation 3 of the IA Regulations. In addition, the appellant was misleading its investors that it was registered with SEBI as an investment advisor and, therefore, played a fraud in violation of Regulation 3 and 4 of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003.

8. Consequently, the direction to refund the amount and restraining the appellant from accessing the securities market and the imposition of penalty does not suffer from any error of law. The appeal fails and is dismissed.

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