(2023) 03 SEBI CK 0006

In the Securities Appellate Tribunal Mumbai

Case No : Appeal No. 224 Of 2023

Navneet Kumar And Others APPELLANT

Vs

Securities And Exchange Board Of India RESPONDENT

Date of Decision : 02-03-2023

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 0006

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

Bench : Division Bench

Advocate : Simranjeet Kaur, Sumit Rai, 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 Executive Director of Securities and Exchange Board of India (hereinafter referred to as 'SEBI') imposing a penalty of Rs. 5 lacs each on the appellants for carrying out investment advisory activities without getting itself registered under Securities and Exchange Board of India (Investment Advisers) Regulations, 2013 (hereinafter referred to as 'Investment Advisers Regulations').

2. The facts leading to the filing of the present appeal is, that a complaint was received by SEBI that the appellants are giving false assurances of handsome returns and are operating through a website. Based on the complaint, SEBI conducted an examination into the affairs of the appellants and found that the appellants were collectively carrying out an unregistered investment advisory activities. Accordingly, a show cause notice dated July 18, 2022 was issued to show cause as to why an enquiry should not be held and penalty should not be

imposed. The authority after considering the reply and the material evidence on record found that the appellants were carrying out investment advisory services without getting registered under the Investment Advisers Regulations, 2013 and, accordingly, issued a number of directions for refund of the amount collected and also imposed a penalty of Rs. 5 lacs each.

3. We have heard Ms. Simranjeet Kaur, the learned counsel for the appellants and Mr. Sumit Rai, the learned counsel with Mr. Ravishekhar Pandey, Ms. Shefali Shankar, Ms. Rasika Ghate, Mr. Nishit Dhruva, the learned counsel for the respondent.

4. The contention of the appellant Navneet Kumar is that he was a freelance website designer and software developer and is not involved in advisory services. The said appellant contended that Kamaljeet Singh had approached him to prepare a website for his advisory services which he had done and beyond creating the website, the said appellant had nothing to do with the advisory activities carried out by Kamaljeet Singh.

5. In so far as the appellant Kamaljeet Singh is concerned, he admitted that he carried out the advisory activities without obtaining registration from SEBI as had no knowledge about the SEBI Act and its Regulations and immediately upon coming to know he had stopped the business activities. It was contended that a lenient view should be taken.

6. Having heard the learned counsel for the parties, we find that the appellants were known to each other for many years and were engaged together in many business activities. In so far as the investment advisory activities is concerned, admittedly the appellant Navneet Kumar designed the website. We however find that in the website that was designed by the appellant Navneet Kumar, his bank accounts were mentioned in the website for receiving fees from the clients. Further the address of the appellant Navneet Kumar was also used in the website. Thus, the contention of the appellant Navneet Kumar that he was not involved in the advisory activities and had only business relationship with Kamaljeet Singh for the purpose of website designing is erroneous.

7. The evidence that has come on record clearly indicates that the advisory activities was being carried out by both the appellants Navneet Kumar and Kamaljeet Singh without registration and, therefore, there was a contravention to Section 12(1) of the SEBI Act read with Regulation 3(1) of the Investment Advisers Regulations.

8. Consequently, we do not find any error in the impugned order passed by the Executive Director. The appeal fails and is dismissed.

9. 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.