(2023) 12 SEBI CK 0001

In the Securities Appellate Tribunal Mumbai

Case No : Miscellaneous Application No. 1327 Of 2023, Appeal No. 914 Of 2023

Patibandla Venkata Vasanta Kumar — APPELLANT

Vs

Securities & Exchange Board Of India — RESPONDENT

Date of Decision : 04-12-2023

Acts Referred:

Securities And Exchange Board Of India (Investment Advisers) Regulations, 2013 — Regulation 3(1)
Securities And Exchange Board Of India (Intermediaries) Regulations, 2008 — Regulation 35
Securities And Exchange Board Of India Act, 1992 — Section 11, 12(1)

Citation : (2023) 12 SEBI CK 0001

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

Bench : Division Bench

Advocate : Prakash Shah, Kushal Shah, Shreya Parikh, Nitin Jain, Prapti Kedia, Ratan Singh, Anuj V. R, Aryan Sarkar

Final Decision : Dismissed/Disposed Of

Judgement

Tarun Agarwala, Presiding Officer

1. The appellant has filed the present appeal challenging the order dated August 24, 2023 passed by the Chief General Manager of the Securities and Exchange Board of India ("SEBI" for short) whereby the appellant has been directed to refund the monies received from the investors towards investment advisory services. The appellant has also been restrained from accessing the securities market for a period of one year from the date of the impugned order or till the expiry of one year from the date of completion of refunds. The appellants has also been imposed a penalty of Rs. 4 lakh.

2. The facts leading to the filing of the present appeal is, that a complaint was received by SEBI regarding the appellant offering investment advisory services with guaranteed assured returns causing monetary loss to the complainants.

3. Based on the complaint SEBI conducted an examination and thereafter issued a show cause notice dated July 19, 2022. After considering the reply and the material evidence on record, the WTM found that the appellant was carrying on investment advisory activities without obtaining a certificate of registration under Section 12(1) of the SEBI Act, 1992 read with Regulation 3(1) of the SEBI (Investment Advisers) Regulations, 2013 ("IA Regulations" for short). The WTM found that the appellant had opened a website offering advisory services upon payment of fees through the website. The WTM further found that the appellant has not denied the allegations that he was providing investment advisory services without obtaining a registration under the relevant regulations. In view of the aforesaid finding various direction were issued.

4. We have heard Mr. Prakash Shah, the learned counsel with Mr. Kushal Shah, CA for the appellant and Ms. Shreya Parikh, the learned counsel with Mr. Nitin Jain, Ms. Prapti Kedia, Mr. Ratan Singh, Mr. Anuj V. R., Mr. Aryan Sarkar, the learned counsel for the respondent.

5. Having heard the learned counsel for the appellant, we find that in the instant case the direction to refund the amount has been issued under Section 11 of the SEBI Act. We are of the opinion that SEBI has a power to direct refund of amount in the interest of the investors or to promote development of the securities market. In any case, such power is also derived under Regulation 35 of the Intermediaries Regulations. In our opinion the direction to refund the amount is squarely covered under Regulation 35.

6. We find that admittedly the appellant was engaged in carrying out investment advisory services without registration with SEBI as required under the SEBI Act and its relevant Regulations. Thus, the activities that the appellant was carrying out were unlawful and, thus, the entire money collected by the appellant was required to be refunded. The directions given by the WTM in the impugned order requires no interference.

7. We find that the controversy involved in the present appeal is squarely covered by a decision of this Tribunal in Eprofitzone Fincap Consultant Private Limited & Ors. vs. SEBI (Appeal no. 490 of 2022 decided on August 25, 2022), Shri T. Prabhu vs. SEBI (Appeal No. 1019 of 2022 decided on January 3, 2023) and Murugan Deivendran vs SEBI (Appeal No. 309 of 2022 decided on November 16, 2022).

8. In view of the aforesaid, we do not find any error in the impugned order. The appeals are dismissed with no order as to costs. The miscellaneous applications are disposed of. Three months further time is allowed to the appellant to refund the money in terms of the impugned order.