
(2023) 07 SEBI CK 0084

In the Securities Appellate Tribunal Mumbai

Case No : Appeal No. 628 Of 2023

Prateek Vyas

APPELLANT

Vs

Securities And Exchange Board Of India

RESPONDENT

Date of Decision : 25-07-2023

Acts Referred:

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

Citation : (2023) 07 SEBI CK 0084

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

Bench : Division Bench

Advocate : Abhishek Mishra, Vyom Shah, Daksha Kasekar, Veena Hari

Final Decision : Dismissed

Judgement

Tarun Agarwala, Presiding Officer

1. The appellant has challenged the order dated May 2, 2023 passed by the Whole Time Member (hereinafter referred to as 'WTM') of Securities and Exchange Board of India (hereinafter referred to as 'SEBI') directing the appellant to refund the money received from any investors / clients in respect of his unregistered investment advisory activities and further restrained him from accessing the securities market directly or indirectly for a period of six months from the date of completion of refund to clients / investors.

2. The facts leading to the filing of the present appeal is, that the appellant was the sole proprietor of M/s. Big Life Capital Solutions. On the basis of certain complaints received from the clients of the appellant, SEBI conducted an investigation and found that the appellant was engaged in investment advisory services without obtaining a certificate of registration in violation of Section 12(1) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as 'SEBI Act') and Regulation 3 of the Securities and Exchange Board

of India (Investment Advisers) Regulations, 2013 (hereinafter referred to as 'AI Regulations').

3. Accordingly, a show cause notice was issued to show cause as to why suitable direction including the refund of fees collected, debarment, etc. should not be issued under Section 11 and 11B of the SEBI Act. After considering the material evidence on record and after giving an opportunity of hearing to the appellant, the WTM found that the appellant was carrying on investment advisory services without obtaining a registration under Regulation 3(1) of the IA Regulations.

4. We have heard Mr. Abhishek Mishra, CS for the appellant and Mr. Vyom Shah, the learned counsel with Ms. Daksha Kasekar, Ms. Veena Hari the learned counsel for the respondent.

5. Admittedly, the appellant was carrying on investment advisory services without obtaining registration under Regulation 3(1) of the IA Regulations. This resulted in violation of Section 12(1) of the SEBI Act. The contention of the appellant is that he was working as an employee was disbelieved by the WTM. No evidence in the form of salary slip, employees ID, employment agreement has been produced before us to show that the appellant was working as an employee. The only contention raised by the appellant is that the direction to refund a sum of Rs. 1 crore is patently erroneous in as much as the entire amount shown in the bank accounts was not towards advisory services and that at best a sum of Rs. 10 lakh is refundable. It was urged that these facts were given in the post hearing submissions which aspect has not been considered.

6. We find that in the impugned order the appellant had submitted that the revenue from the investment advisory business was not more than Rs. 35 lakh, but no proof had been filed. The WTM while directing the appellant to refund the money to the investors / clients also directed that the CA would certify the refund of the investment advisory fees made by the appellant and, in this regard, while certifying the refund would consider the material evidence on record.

7. In view of the aforesaid, we do not find any infirmity in the impugned order. The appeal fails 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.