(2023) 04 SEBI CK 0002

In the Securities Appellate Tribunal Mumbai

Case No : Appeal No. 315 Of 2021, 01 Of 2022

Rishabh Jain And Others — APPELLANT

Vs

Securities And Exchange Board Of India And Others — RESPONDENT

Date of Decision : 11-04-2023

Acts Referred:

Securities And Exchange Board Of India (Investment Advisers) Regulations, 2013 — Regulation 2(m), 3(1)

Citation : (2023) 04 SEBI CK 0002

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

Bench : Division Bench

Advocate : Pesi Modi, Kalpana Deswai, Joby Mathew, Nitiksha Parmar, Tanya Gupta, Vishal Kanade, Nidhi Singh, Deepti Mohan, Niket Dalal, Hubab Sayeed, Purvi Jain, Vidhii Partners, T. Tamil Selvi, K. Mavoa Jacob, Priyanka Singh

Final Decision : Dismissed

Judgement

Tarun Agarwala, Presiding Officer

1. Two appeals have been filed against a common order dated July 21, 2020 passed by the Whole Time Member ("WTM" for convenience) of the Securities and Exchange Board of India ("SEBI" for convenience) directing the appellants to refund the amount collected by providing Investment Advisory Services without getting itself registered under the SEBI (Investment Advisers) Regulations, 2013 ("IA" Regulations" for convenience) and further debarred the appellants from accessing the securities market for a period of three years from the date of the order or till the expiry of three years from the date of completion of refunds to the investors.

2. The facts leading to the filing of the present appeal is, that based on emails and complaints received by SEBI the matter was examined and it revealed that the appellants were carrying on Investment Advisory Services through various websites and using a payment gateway through which monies were being

received by the appellant Rishabh Jain, noticee no. 1, Ubaidur Rahman, noticee no. 2 and G. Kadar Hussain, noticee no. 3. Further, examination revealed that the Investment Advisory Services was being carried out through these websites without itself getting registered under the IA Regulations.

3. Accordingly, an ex-parte ad-interim order-cum- show cause notice dated March 20, 2019 was issued to show cause as to why an enquiry should not be held and appropriate orders should not be passed. The WTM after considering the replies and the material evidence on record found that the appellants were carrying on Investment Advisory Services without getting themselves registered under the IA Regulations. The WTM further found that monies' that was being received into their personal accounts was not been disputed and accordingly necessary directions for refund and for debarment was issued.

4. We have heard Shri Pesi Modi, the leaned senior counsel and Shri T. Tamil Selvi, the learned counsel for the appellants and Shri Vishal Kanade, the learned counsel for the respondent no. 1 and Shri Pesi Modi, the learned senior counsel for respondent no. 2.

5. It may be stated here, that noticees no. 2 and 3, namely, Ubaidur Rahman and G. Kadar Hussain were brothers. Ubaidur Rahman, noticee no. 2 died on June 16, 2020 after filing his reply. No appeal has been filed by the legal representatives of Ubaidur Rahman. Noticee no. 3 G. Kadar Hussain has filed an appeal against the impugned order but died on April 29, 2022 and his heirs have been brought on record.

6. The contention of the appellant Rishabh Jain is, that initially he was trading in the stock market and through the website came in contact with noticee no. 3 who was the contact person and who persuaded him to subscribe to his website for the stock tips. The appellant contend that he stated taking tips from the said website of noticee no. 3 and also traded in the stock market based on the tips given by noticees no. 2 and 3. It was stated that the websites and the advisory business belongs to noticees no. 2 and 3 and does not belong to the appellant. It was also alleged that in 2010 noticees no. 2 and 3 intimated the appellant that they intent to expand their Investment Advisory business and offered the appellant to employ him for operational work in respect of a website known as "Trade Less but Wise Global".

7. It is admitted that the appellant accepted this offer but contends that he was working as an employee and not as a partner but admits opening of a bank account in his name in which monies were being received from the clients. The appellant however contended that the monies were being withdrawn by noticees no. 2 and 3 through cheques and ATM card from Madurai where they were staying and which cheques and ATM card were provided by the appellant to them. The appellant further stated that the services of the appellant was permanently terminated on June 26, 2016 from the email sent by noticee no. 3 and, therefore, contended that the said email would indicate that he was not a

partner but an employee of noticees no. 2 and 3.

8. In so far as noticee no. 3 G. Kadar Hussain is concerned, the appellant contended that he and his brother were illiterate and had no knowledge of stocks and shares and providing tips. The appellant contended that he was an employee of noticee no. 1 Rishabh Jain. The appellant contended that noticee no. 1 was the real mastermind and that he was only an employee.

9. Having heard the learned counsel for the parties at some length, we find that appellants were beneficiaries through PayUmoney from 13 websites which were providing tips and Investment Advisory Services. All these websites were unregistered. These websites were created by the appellants periodically and lured investors by promising assured monthly return on buying and selling of the securities based on the tips provided by them. Once the subscription was received, the noticees gave stock tips for a few days to the subscribers and, thereafter, stop entertaining their calls which led to the filing of the complaints. This modus operandi has not been denied.

10. The contention of the appellants that they were employees of each other and not beneficiaries of various bank accounts is wholly erroneous. None of the appellants have specifically denied that the bank accounts did not belong to them or were not operated by them nor have denied that their personal accounts were being used to collect the subscription money from the investors.

11. We also find that the appellants have not denied the unrealistic assured returns on investment being provided through the subscription plans / packages provided by the appellants on the websites. The appellants have also not denied the subscription fees / amounts received by them through the websites. Thus, we are of the opinion, that on a preponderance of probability the WTM was justified in holding that the appellants were carrying out unregistered investment advisory activities.

12. The learned counsel for the appellant Rishabh Jain contended that the money that was being collected was being withdrawn by noticees no. 2 and 3 from Madurai on the basis of blank signed cheques and ATM card which he had sent from Delhi. It was thus contended, that noticees no. 2 and 3 were the actual recipients of the subscription amount and, therefore, the appellant cannot be penalized for the refund of the subscription amount. The argument appears attractive in the first blush but on a closer scrutiny we find that a specific finding has been given by the WTM that there were multiple transaction of receipts and debits between the appellant Rishabh Jain with the other two noticees which entries have not been denied and, therefore, suggest that these transactions related to the profits being shares.

13. The contention that the appellant Rishabh Jain was only an employee and not a partner cannot be believed. The documentary evidence available on the record clearly suggest a nexus between the three noticees acting in tandem and luring investors to trade in the stocks on tips provided by them. Admittedly, the

business was being run without obtaining a registration under the IA Regulations.

14. The learned counsel for the appellant Rishabh Jain submitted that he cannot be charged under Regulation 3(1) of the IA Regulations read with Regulation 2(m) which defines an Investment Advisor since there is no finding that the appellant Rishabh Jain was providing tips to any of the subscribers, whereas, the evidence indicates that only Ubaidur Rahman and G. Kadar Hussain noticees no. 2 and 3 were providing tips to the subscribers. In this regard, the learned counsel place reliance on Regulation 3(1) and 2(m) which are extracted hereunder:-

"2 (m) "investment adviser" means any person, who for consideration, is engaged in the business of providing investment advice to clients or other persons or group of persons and includes any person who holds out himself as an investment adviser, by whatever name called;

Application for grant of certificate.

3. (1) On and from the commencement of these regulations, no person shall act as an investment adviser or hold itself out as an investment adviser unless he has obtained a certificate of registration from the Board under these regulations:

Provided that a person acting as an investment adviser immediately before the commencement of these regulations may continue to do so for a period of six months from such commencement or, if it has made an application for a certificate under sub-regulation(2) within the said period of six months, till the disposal of such application."

15. It was contended that the appellant can only be penalized if he is found to be providing tips which in the instant case was lacking as there is no such evidence against him. In our opinion, such contention raised by the appellant is patently erroneous. Regulation 3(1) provides that "no person shall act as an investment advisor". Regulation 2(m) defines investment advisory to mean any person who is engaged in the business of providing investment advice to clients and includes any person who holds out himself as an investment adviser.

16. In the instant case, we find that the appellant was acting as an investment advisor which is proved from the voluminous documents which have been found against the appellant. There is evidence that based on the websites created by the appellant and the other two noticees subscription was being received in the personal accounts of the three noticees. The contention that the appellant was not actually involved in giving stock tips is immaterial as it is sufficient to book the appellant on the ground that he was acting as an investment advisory.

17. In view of the aforesaid, we do not find any error in the impugned order. Both the appeals fail and are dismissed with no order as to costs.

18. 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.