**(2023) 06 SEBI CK 0008**

**In the Securities Appellate Tribunal Mumbai**

**Case No :** Miscellaneous Application No. 611 Of 2023, Appeal No. 446 Of 2023

Sandeep Yadav APPELLANT

Vs

Securities And Exchange Board Of India RESPONDENT

**Date of Decision :** 05-06-2023

**Acts Referred:**

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

**Citation :** (2023) 06 SEBI CK 0008

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

**Bench :** Division Bench

**Advocate :** Abhishek Mishra, Vyom Shah, Daksha Kasekar, Mansukhlal Hiralal

**Final Decision :** Dismissed/Disposed Of

## Judgement

Tarun Agarwala, Presiding Officer

1. The appellant has challenged the order dated January 30, 2023 passed by the Whole Time Member ('WTM' for short) of the Securities and Exchange Board of India ('SEBI' for short) directing the appellant to refund the money received from the investors in respect of investment advisory services and has also restrained the appellant from accessing the securities market for a period of two years from the date of the order of till the expiry of two years from the date of completion of refund to the investors.

2. We have heard Shri Abhishek Mishra, Company Secretary and Shri Vyom Shah, the learned counsel for the respondent.

3. It was urged that the show cause notice was issued belatedly and therefore on this short ground the proceedings should be quashed and the impugned order should be set aside. It was also urged that the appellant was only an employee and that the main architect of the advisory services was one Abhishek Sharma. It was also urged that the direction to refund the amount was incorrect in as much

as certain amounts credited in the bank accounts were not relating to the advisory services.

4. From a perusal of the record, we find that the appellant was carrying investment advisory services without being registered under Regulation 3(1) of the SEBI (Investment Advisers) Regulations, 2013 (‘IA Regulations’ for short).

This fact has not been disputed by the appellant.

5. On the issue of delay, we find that SEBI received a complaint against the appellant for the first time in September 2015 and the matter was referred to the Special Task Force, Madhya Pradesh Police. Thereafter, SEBI undertook an examination which involved calling for the records from various banks and payment gateway which investigation was completed only in June 2020 and thereafter a show cause notice was issued on July 9, 2021. Thus, we find that there is no undue delay on the part of SEBI in issuance of the show cause notice.

6. Insofar as the contention that the appellant was only an employee and that Abhishek Sharma was the main person who was running the show, in this regard, we find that the bank accounts indicated that the appellant was running the firm as a proprietor and was also operating the accounts. Further, a certificate issued by the District Labour Office, Indore under the Madhya Pradesh Shops and Establishment Act, 1958 certified that the appellant was running Capital Vista Services as a proprietor.

7. We also find that the appellant in his reply dated February 19, 2022 admitted that he was the proprietor of Capital Vista Services but subsequently changed his stand to allege that he was only an employee in Capital Vista Services. We are of the opinion that in view of the KYC documents and the appellant operating the bank accounts and in the absence of any other evidence we are of the opinion that the appellant was operating the firm as a proprietor.

8. No contention was raised before WTM with regard to the credit entries in the bank accounts which he was operating. Consequently, the contention that direction for refund was incorrect is baseless.

9. In view of the aforesaid, the appeal lacks merit and is dismissed with no order as to costs. The miscellaneous application is disposed of.

10. 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.

 