(2023) 03 SEBI CK 0052

In the Securities Appellate Tribunal Mumbai

Case No : Appeal No. 269 Of 2023

Sourabh Rai APPELLANT

Vs

Securities And Exchange Board Of India RESPONDENT

Date of Decision : 28-03-2023

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 0052

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

Bench : Division Bench

Advocate : Abhishek Mishra, Sumit Rai, Manish Chhangani, Samreen Fatima, Sumit Yadav

Final Decision : Dismissed

Judgement

Tarun Agarwala, Presiding Officer

1. The present appeal has been filed against the order dated December 26, 2022 passed by the Whole Time Member ("WTM" for short) of the Securities and Exchange Board of India ("SEBI" for short) directing the appellant and other noticees to refund the amount collected from the investors within three months in respect of its unregistered investment advisory activities and further restrained the appellant from buying, selling or otherwise dealing in the securities market for a period of three years or till the expiry of three years from the date of refund of the amount to the investors.

2. The facts leading to the filing of the present appeal is, that the investigation was started by SEBI on the basis of the complaints received on the SCORES platform. Upon examination, it was found that the appellant and other noticees were found to be carrying out investment advisory activities without obtaining a certificate of registration. Accordingly, a show cause notice dated March 12, 2020

was issued alleging that the appellant and other noticees were carrying out investment advisory activities without obtaining a certificate of registration in violation of the provisions of Section 12(1) of the SEBI Act read with Regulation 3(1) of the SEBI (Investment Advisers) Regulations, 2013 ("Investment Advisers Regulations" for short).

3. After considering their replies and the material evidence on record the WTM found that appellant was a partner in noticee no. 1 M/s. Capproin Financial Advisory Services along with noticee no. 3 and were carrying out investment advisory services and not research market analysis. The WTM found that the said investment advisory services was being carrying out without obtaining registration under the Investment Advisers Regulations.

4. We have heard Shri Abhishek Mishra, CS and Shri Sumit Rai, learned counsel assisted by Shri Manish Chhangani, Ms. Samreen Fatima and Shri Sumit Yadav, the learned counsel for the respondent.

5. The only submission made by the appellant was that he was not carrying out any investment advisory services and that he was only carrying out research market analysis for which no registration was required. In this regard we have perused the impugned order and we find that the WTM had dwelt in length in coming to a conclusion that appellant was carrying on business which was in the nature of investment advisory services and was not in the nature of research analysis. The WTM found that the website of the appellant clearly indicated that they were projecting stock tips under various categories and that were offering prospective investors, various subscription packages upon charging different amount for different services. The WTM further found that the account opening form for the bank account also indicated the entry of business as "Financial Advisory Services". The WTM accordingly came to a conclusion that the appellant was offering tips relating to shares, bullion, futures and options and such tips / recommendations were in the nature of investment advisory services and was not in the nature of research analysis.

6. Nothing has been pointed out by the appellant nor has any evidence been brought on record to show that appellant was only providing research analysis and was not carrying out investment advisory services.

7. In view of the aforesaid, we do not find any error in the impugned order 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.

