**(2023) 07 SEBI CK 0018**

**In the Securities Appellate Tribunal Mumbai**

**Case No :** Appeal No. 515 Of 2023

Vijesh Joshi — APPELLANT

Vs

Securities And Exchange Board Of India — RESPONDENT

**Date of Decision :** 11-07-2023

**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) 07 SEBI CK 0018

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

**Bench :** Division Bench

**Advocate :** Vedchatan Patil, Vishal Kanade, Pritish Chatterjee, Daksha Kasekar, Mansukhlal Hiralal

**Final Decision :** Dismissed

## Judgement

Tarun Agarwala, Presiding Officer

1. The appellant has filed the present appeal challenging the order dated March 29, 2023 passed by the Whole Time Member ("WTM" for short) of the Securities and Exchange Board of India ("SEBI" for short) whereby the appellant along with noticee no. 1 and 3 have been directed to refund the monies received from the investors towards investment advisory services. The appellants has also been restrained from accessing the securities market for a period of three years from the date of the impugned order or till the expiry of three years from the date of completion of refunds. The appellants has also been imposed a penalty of Rs. 6 lakh.

2. The facts leading to the filing of the present appeal is, that several complaints were received by SEBI regarding the appellant and other noticees for offering

 

investment advisory services with guaranteed assured returns causing monetary loss to the complainants.

3. Based on these complaints SEBI conducted an examination and thereafter issued a show cause notice dated February 1, 2021. After considering the replies and material evidence on record, the WTM found that the appellant along with noticee no. 3 was carrying on investment advisory activities under the name of M/s. Investment India Financial Services 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 two websites displaying themselves as investment adviser registered with SEBI. The WTM found that the appellant was offering advisory services in 16 products and seven bank accounts in which funds were being received. The WTM further found that the appellant and the other partner noticee no. 3 had not denied the allegations that noticee no. 3 provided investment advisory services without obtaining a registration under the relevant regulations. Noticee no. 3 and 4 also admitted that they were the only partners of noticee no. 1 during the period under examination. The WTM further found that noticee no. 3 alleged that the entire operation was run by noticee no. 4 i.e. appellant and, on the other hand, the appellant has tried to pin the blame on noticee no. 3contending that partnership firm was dissolved. The WTM further concluded that the appellant along with noticee no. 3 were the only partners during the period under examination. In view of the aforesaid finding various direction were issued.

4. We have heard Shri Vedchetan Patil, the learned counsel for the appellant and Shri Vishal Kanade, the learned counsel for the respondent.

5. The learned counsel for the appellant contended that there is no power under the SEBI Act or under the IA Regulations to refund the amount collected as fee for the services rendered by the appellant and its Company and therefore direction to refund the amount was wholly illegal. It was contended that Regulation 35 of the SEBI (Intermediaries) Regulations, 2008 ("Intermediaries Regulations" for short) requires refunding any money collected from the securities under any "scheme or otherwise". It was contended that in the instant case the money so collected was towards services rendered and was not under "any scheme or otherwise" and therefore Regulation 35 is not applicable. The submission of the learned counsel for the appellant is patently erroneous.

6. 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. The contention that Regulation 35 is only with regard to collection of money under any scheme is patently erroneous. The word "scheme" is wide enough to include

 

a device which the appellant have carried out in the form of giving advisory services without obtaining registration. In view of the aforesaid, the contention raised by the appellant does not survive.

7. It was also contended that the appellant had dissolved the partnership of noticee no. 1 and thereafter noticee no. 3 continued as advisory services. It was, thus, contended that the appellant at best can only be entitled to refund the amount till the date when the appellant was a partner in the firm but after the dissolution of the partnership the appellant is not entitled for the action of the respondent in carrying out advisory services. In our opinion the submission cannot be accepted as there is no clear cut evidence to show that the partnership had validly dissolved. In the absence of any cogent proof the submission cannot be accepted.

8. In view of the aforesaid, we of the view that since appellants were carrying out advisory services without registration the direction to refund the amount by the WTM does not suffer from any error of law.

9. The appeal fails and is dismissed summarily with no order as to costs.

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.