(2023) 07 SEBI CK 0067

In the Securities Appellate Tribunal Mumbai

Case No : Miscellaneous Application No. 904, 905 Of 2023, Appeal No. 624 Of 2023

Vusa Ravi APPELLANT

Vs

Securities And Exchange Board Of India RESPONDENT

Date of Decision : 27-07-2023

Acts Referred:
Securities And Exchange Board Of India Act, 1992 — Section 11, 11B, 12(1)

Citation : (2023) 07 SEBI CK 0067

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

Bench : Division Bench

Advocate : Kunal Katariya, Mahir Shah, Sumit Rai, Manish Chhangani, Samreen Fatima, Sumit Yadav, Abhay Chauhan

Judgement

Tarun Agarwala, Presiding Officer

1. The appellant has challenged the order dated April 28, 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 two years 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 Global Advisors. 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. Kunal Katariya, the learned counsel with Mr. Mahir Shah, the learned counsel for the appellant.

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 only contention raised by the appellant is that the direction to refund is patently erroneous in as much as the entire amount shown in the bank accounts was not towards advisory services but was for other services. It was urged that these facts were provided which aspect has not been considered.

6. In view of the admitted position, we are of the opinion that the appellant was lending investment advice in an unauthorized manner without getting registered under Regulation 3 of the IA Regulations, 2013. However, we find that the amount collected towards advisory services needs to be crystalized.

7. For the reasons stated aforesaid, we do not find any manifest error in the impugned order. The appeal fails and is dismissed. However, with regard to the direction for refund, considering the facts and circumstances that have been brought above, we direct the appellant to move an appropriate representation within three weeks from today giving details of the credit entries of the three bank accounts and indicate with precision as to which amount relates to advisory services and which amount does not relate to advisory services. The authority will consider each and every entry and thereafter crystalize the amount to be refunded within two months thereafter.

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.