(2023) 03 SEBI CK 0045

In the Securities Appellate Tribunal Mumbai

Case No : Appeal No. 275 Of 2023

Yogendra Singh 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 0045

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

Bench : Division Bench

Advocate : Abhishek Mishra, Sumit Rai, Ravishekhar Pandey, Shefali Shankar, Rasika Ghate, Nishit Dhruva????????????,

Final Decision : Dismissed

Judgement

Tarun Agarwala, Presiding Officer

1. The present appeal has been filed against the order dated January 2, 2023 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 were 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 complaint received by Equity 99. Upon examination, it was found that the appellant and another noticee were found to be carrying out investment advisory activities without obtaining a certificate of registration and allegedly using the name of Equity 99 which was registered with

SEBI.

3. Accordingly, a show cause notice dated June 4, 2021 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).

4. After considering their replies and the material evidence on record the WTM found that appellant along with noticee no. 2 and were carrying on investment advisory services. The WTM found that the said investment advisory services was being carried out without obtaining registration under the Investment Advisers Regulations.

5. We have heard Shri Abhishek Mishra, CS and Mr. Sumit Rai, the learned counsel assisted by Shri Ravishekhar Pandey, Ms. Shefali Shankar, Ms. Rasika Ghate, Shri Nishit Dhruva, the learned counsel for the respondent.

6. The only submission made by the appellant was that he was not carrying out any investment advisory services and that he had taken a franchisee from Mr. Mahendra Seekarwar who was a partner in Equity 99. The WTM found that there was a partnership firm was which named as Equity 99 which was also registered with SEBI and that the appellant had opened a bank account in the same name namely Equity 99 but as a proprietorship firm. The account opening form in the bank also indicated that the appellant was the proprietor of Equity 99. The documents used for opening the said account was the PAN and Aadhaar card of Mr. Yogendra Singh. The appellant also got its firm registered under the Shop and Establishment Act.

7. We also find that the contention of the appellant that he had entered into a partnership agreement with the partner of Equity 99 along with Anshul Rathore who is noticee no. 2 is not based on any cogent evidence. In the absence of any document the contention of the appellant cannot be taken into consideration.

8. 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. The WTM found that the website of the appellant clearly indicated that they were projecting stock tips under various categories and were offering prospective investors, various subscription packages upon charging different amount for different services. The WTM accordingly came to a conclusion that the appellant was offering tips and that such recommendations were in the nature of investment advisory services without taking a registration certificate under the relevant regulations.

9. In view of the aforesaid, we do not find any error in the impugned order and is dismissed 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.