

BEFORE THE SECURITIES APPELLATE TRIBUNAL  
MUMBAI

**Date of Decision: 25.08.2022**

**Misc. Application No. 822 of 2022**  
**And**  
**Appeal No. 490 of 2022**

1. Eprofitzone Fincap Consultant Private Limited
2. Prakash Kumar
3. Ajit Kumar

57 ICS Square Building,  
8<sup>th</sup> Main Road, JP Nagar 3<sup>rd</sup> Phase,  
Near SBI Bank Signal,  
Bangalore,  
Karnataka- 560 078

...Appellants

Versus

Securities and Exchange Board of India,  
SEBI Bhavan, Plot No. C-4A, G-Block,  
Bandra-Kurla Complex, Bandra (East),  
Mumbai- 400 051

...Respondent

Mr. Saurabh Bacchawat, Advocate with Mr. Deepak Dhane,  
Advocate i/b Corporate Pleaders for the Appellants.

Mr. Manish Chhangani, Advocate with Mr. Ravishekhar Pandey  
and Ms. Samreen Fatima, Advocates i/b The Law Point for  
Respondent SEBI.

CORAM: Justice Tarun Agarwala, Presiding Officer  
Justice M. T. Joshi, Judicial Member  
Ms. Meera Swarup, Technical Member

Per: Justice Tarun Agarwala, Presiding Officer (Oral)

**Misc. Application No. 822 of 2022**

For the reasons stated in the application, the delay in the filing of the appeal is condoned. The application is allowed.

**Appeal No. 490 of 2022**

1. The present appeal has been filed against the order dated May 27, 2022 passed by the Whole Time Member (“WTM” for convenience) of the Securities and Exchange Board of India (“SEBI” for convenience) directing the appellants to refund the money received from its clients/ investors as fee on account of carrying investment advisory activities without getting itself registered under Section 12(1) of the Securities and Exchange Board of India Act, 1992 (“SEBI Act, 1992” for convenience) read with regulation 3 of the SEBI (Investment Advisers) Regulations, 2013 (“IA Regulations 2013”).

2. The appellants were further debarred from accessing the securities market for a period of two years or till the expiry of two years from the date of completion of refund to the investors. Further, other directions were also issued.

3. The facts leading to the filing of the present appeal is, that the appellants started their investment advisory activities from the year October 2016 onwards. A complaint was received by SEBI from an investor who alleged that the appellants had assured high profits and after the money was transferred the company was neither replying nor providing any records for the payments made.

4. Based on the investigation, it was observed that the appellants were engaging and providing investment advisory services without obtaining a certificate of registration from SEBI and were also promising assured returns to the investors.

5. Accordingly, an interim order dated December 07, 2020 was passed issuing a slew of directions directing the appellants to cease and desist from acting as an investment advisor and not to divert any funds or dispose of or alienate any assets. The appellants were also directed to withdraw the advertisements, representations, literatures, brochures with regard to their activities and were also restrained from accessing the securities market. By the interim order the appellants were directed to show cause as to why the services offered by the appellants should not be held as an investment advisory services in terms

of the IA Regulations, 2013 and their advisory activities should not be treated as an unregistered activities in violation of Section 12 of the SEBI Act. The show cause notice also directed the appellants to show cause why the amount of money collected by them to the tune of Rs. 3,35,13,232/- should not be refunded to the investors.

6. The WTM after considering the reply has passed the impugned order holding that the activities carried out by the appellants were investment advisory services and the appellants were not registered under Section 12 of the SEBI Act read with Regulation 3 of the IA Regulations, 2013. The WTM further held that the activities carried out was providing an assured return which was wholly illegal and, consequently, directed the appellants to refund the amount of Rs. 3,35,13,232/- within three months.

7. We have heard Shri Saurabh Bacchawat, the learned counsel for the appellants and Shri Manish Chhangani, the learned counsel for the respondent.

8. The only contention raised by the appellants was that the directions to refund a sum of Rs. 3,35,13,232/- was wholly incorrect in as much as certain amount were inter se transfer of

the appellants from one account to another account and which were not money received from the investors for advisory services. It was contended that in this regard the appellants are obtaining a certificate from the Chartered Accountant which will give sufficient proof as to the extent of fee the appellants had received from the investors.

9. We have considered this submission. Admittedly, the appellants were carrying out advisory services without getting themselves registered under the SEBI Act and its Regulations. The activities that the appellants were carrying out were thus unlawful.

10. We find that a specific direction was issued in the ex-parte ad-interim order cum show cause notice dated December 07, 2020 that the amount of Rs. 3,35,13,232/- prima facie has been collected by the appellants towards advisory services given to the investors. The appellants, in their reply have not disputed the amount received from the advisory services. Thus, the direction given by the WTM in the impugned order for refund of the amount of Rs. 3,35,13,232/- is justified.

11. Even as on date no evidence has been filed by the appellants to state that the amount of Rs. 3.35 crores is incorrect.

12. In the absence of any evidence, we are satisfied that no case is made out to interfere in the impugned order. The appeal fails and is dismissed with no order as to costs.

13. 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.

Justice Tarun Agarwala  
Presiding Officer

Justice M. T. Joshi  
Judicial Member

Ms. Meera Swarup  
Technical Member