

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Decision: 13.04.2023

Misc. Application No. 258 of 2023

And

Misc. Application No. 259 of 2023

And

Appeal No. 276 of 2023

1. M/s Capital Mars
2. Santosh Patidar

821, Dwarkapuri Colony,
Indore,
Madhya Pradesh- 452 009

...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. Deepak Dhane, Advocate with Ms. Aneri Shah, Advocate
i/b. Corporate Pleaders, Advocates for the Appellants.

Mr. Vyom Shah, Advocate with Mr. Bhushan Shah and
Ms. Daksha Kasekar, Advocates i/b Mansukhlal Hiralal & Co.
for the Respondent.

CORAM: Justice Tarun Agarwala, Presiding Officer
Ms. Meera Swarup, Technical Member

Per: Justice Tarun Agarwala, Presiding Officer (Oral)

1. We have heard the learned counsel for the parties. The
present appeal has been filed against the order dated October 27,
2022 passed by the Whole Time Member (“WTM” for

convenience) of the Securities and Exchange Board of India (“SEBI” for convenience) holding that the appellant was carrying on an unregistered investment advisory services in violation of Regulation 3(1) of SEBI (Investment Advisers) Regulations, 2013 (“IA Regulations, 2013” for convenience).

2. The appellant admits that he was carrying on an unregistered advisory services and consequently to that extent the finding of the WTM is therefore confirmed. The learned counsel however contended that the impugned order was passed without serving the show cause notice and without giving an opportunity of hearing. In this regard, we find that the appellant was duly served with the show cause notice at the last known address. It was stated that the same was incorrect but we however find that it was sent at the correct address as given by the appellant himself. In addition, we find that the hearing notice was also served at the same address which came back undelivered and thereafter a publication was made in two newspapers and notice of hearing was also sent at the correct email id. In view of the aforesaid, we are satisfied that the appellants were served as provided under Rule 7 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995.

3. It was urged that the amount directed to be refunded by the WTM is erroneous. In this regard, certain documents have been filed by the appellants to show that the amount collected from the clients towards advisory services was far less than what has been depicted in the impugned order. Considering the aforesaid, while disposing off the appeal we direct the WTM to reconsider the quantum to be refunded by the appellant. In this regard, the appellant shall file an affidavit along with the proof and evidence within three weeks from today which will be considered by the WTM and appropriate orders will be passed within four weeks thereafter. The misc. applications are disposed off accordingly.

4. 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

Ms. Meera Swarup
Technical Member