

IN THE SECURITIES APPELLATE TRIBUNAL  
AT MUMBAI

Dated this the 24<sup>th</sup> day of September, 2024

**CORAM : Justice P.S. Dinesh Kumar, Presiding Officer**  
**Ms. Meera Swarup, Technical Member**  
**Dr. Dheeraj Bhatnagar, Technical Member**

**Misc. Application No. 828 of 2024**  
**And**  
**Appeal No. 506 of 2024**

**BETWEEN:**

1. Mr. Gourav Jain  
New No. 11, Old No. 27, 1<sup>st</sup> Floor,  
Al-Manor Apartments, Opp. IRS Steels,  
2<sup>nd</sup> Cross, Jaibharat Nagar,  
Vivekananda Nagar,  
Bangalore – 560 033.
2. Mrs. Poonam Jain  
New No. 11, Old No. 27, 1<sup>st</sup> Floor,  
Al-Manor Apartments, Opp. IRS Steels,  
2<sup>nd</sup> Cross, Jaibharat Nagar,  
Vivekananda Nagar,  
Bangalore – 560 033. .... Appellants

(By Mr. Vinay Chouhan, Advocate with CS Anand Kankani,  
CS Siddharth Jain, CS Prakhar Godre and Tarak Shah,  
Ms. Muskan Kadiwar and Mr. Khush Padamsi, Advocates  
i/b A Kankani & Associates for the Appellants)

**AND:**

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

(By Mr. Manish Chhangani with Mr. Sumit Yadav, Mr. Abhay Chauhan and Mr. Atul Kumar Agrawal, Advocates i/b The Law Point for the Respondent)

THIS APPEAL IS FILED UNDER SECTION 15T OF THE SEBI ACT, 1992 TO QUASH AND SET ASIDE THE ORDER DATED 31.08.2023 (Exb.-A) PASSED BY THE WHOLE TIME MEMBER, SEBI.

THIS APPEAL COMING ON FOR HEARING THIS DAY, THE TRIBUNAL MADE THE FOLLOWING:

### **ORDER**

**Per: Justice P.S. Dinesh Kumar, Presiding Officer (Oral)**

In this appeal the appellants have challenged the order dated August 31, 2023 passed by the WTM<sup>1</sup> of SEBI<sup>2</sup>.

2. The brief facts of the case are, SEBI instituted proceedings against the appellants who are husband and wife, were the sole proprietors of GJ Advisory Service and Profit Ideas Advisory Services, respectively on the premise that the appellants were carrying on unregistered portfolio management services which was *prima facie* in violation of the provisions of Section 12(1) of the SEBI Act<sup>3</sup> and Regulation 3 of PMS Regulations<sup>4</sup>. After adjudication, the impugned order dated August 31, 2023 has been passed

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<sup>1</sup> Whole Time Member

<sup>2</sup> Securities and Exchange Board of India

<sup>3</sup> Securities and Exchange Board of India Act, 1992

<sup>4</sup> SEBI (Portfolio Managers) Regulations, 1993

issuing directions containing in paragraph 52 of the impugned order.

3. On the last date of hearing, Shri Vinay Chauhan, the learned Advocate for the appellants submitted that SEBI has directed the appellants to refund a sum of Rs. 7.31 crore. According to him, there is an error in the calculation and appellants are liable to refund a sum of Rs. 6.76 crore only. With this submission, he had restricted his prayer for a direction against SEBI to recalculate the amount to be refunded.

4. Today, Shri Manish Chhangani, learned Advocate for the respondent submitted that there is a delay of 240 days in filing the appeal which is not satisfactorily explained and accordingly sought for dismissal of this appeal.

5. We have carefully considered the rival contentions on both delay and merits and perused the records.

6. The main contention urged by the learned Advocate for the appellants is that there is a mistake in calculation of refund amount and appellants are entitled for a further benefit of Rs. 55 lakh. Further, he prayed that appellants may be permitted to liquidate all the shares lying in the frozen demat

account, which is worth about Rs. 9 crore to enable them to refund the amount to investors as per SEBI directions.

7. In the facts and circumstances of the case, in our considered view, since the main prayer is limited for recalculation of the refund amount, it is just and proper to permit the appellants to make a representation to the SEBI with a direction to the SEBI to examine the said request on merits.

8. Learned Advocate also submitted that appellants are in some medical emergency and they may be permitted to use the amount found in excess of Rs. 7.31 crore.

9. Since the appellants have accepted the impugned order except refund of Rs. 55 lakh (Rs. 7.31 – Rs. 6.76 crore), we pass the following:-

**O R D E R**

- (i) Delay condoned;
- (ii) The appellants shall be at liberty to liquidate the shares in the frozen demat account;
- (iii) Appellants shall deposit a sum of Rs. 7.31 crore in an escrow account and follow all the directions contained in paragraph 52 of the impugned order;

(iv) Appellants shall be at liberty to file a representation with SEBI with regard to the amount to be refunded to the investors within two weeks from today. SEBI shall consider the same in accordance with law within four weeks from the date of receipt of representation.

(v) As prayed for by the learned Advocate for the appellant, it is clarified that once a sum of Rs. 7.31 crores is deposited in the escrow account, appellants shall be at liberty to use the remaining amount.

10. The appeal is disposed of with the aforesaid directions.

No costs.

11. Interlocutory application(s), if any, stand disposed of.

Justice P.S. Dinesh Kumar  
Presiding Officer

Ms. Meera Swarup  
Technical Member

Dr. Dheeraj Bhatnagar  
Technical Member

24.09.2024  
msb