

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Hearing : 18.06.2021

Date of Decision : 29.07.2021

**Misc. Application No. 254 of 2018
And
Appeal No. 303 of 2018**

Anirudh Sethi
B-238, Anand Baugh Housing
Cooperative Society, Behind Sussen,
Tarasli Road, Makarpura,
Baroda Pin- 390010.

...Appellant

Versus

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

...Respondent

**With
Misc. Application No. 327 of 2018
And
Appeal No. 390 of 2018**

Anirudh Sethi
B-238, Anand Baugh Housing
Cooperative Society, Behind Sussen,
Tarasli Road, Makarpura,
Baroda Pin- 390010.

...Appellant

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. J. P Sen, Senior Advocate with Mr. Vinay Chauhan, Mr. K. C. Jacob, Advocates i/b Corporate Law Chambers India for the Appellant.

Mr. Kumar Desai, Advocate with Mr. Manish Chhangani, Mr. Anubhav Ghosh, Mr. Ravishekhar Pandey, Advocates i/b The Law Point for Respondent.

CORAM : Justice Tarun Agarwala, Presiding Officer
Justice M. T. Joshi, Judicial Member

Per : Justice M. T. Joshi, Judicial Member

1. The present two appeals have arisen out of a common issue against two impugned orders passed by the Adjudicating Officer (hereinafter referred to as 'AO') and the Whole Time Member (hereinafter referred to as 'WTM').

2. In the year 2007, respondent Securities and Exchange Board of India (hereinafter referred to as 'SEBI') had initiated the proceedings against the appellant vide an ad-interim ex-parte order calling upon him to cease and desist from giving investment advice to clients and to give recommendations containing company specific news in violation of Regulation 4(1) read with Regulation 2(1)(c)(5)

and Regulation 4(2)(k) and Regulation 4(2)(r) of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as 'PFUTP Regulations'). Thereafter on March 12, 2007 the appellant filed an additional affidavit before the WTM and undertook not to indulge into such activities. In the circumstances the interim order was confirmed by the then WTM on July 29, 2009.

However, respondent SEBI found that the appellant in contravention of the above order and the undertaking had continued to indulge in such activities. In the circumstances, a show cause notice was issued on July 10, 2017 calling upon the appellant as to why an inquiry should not be initiated against him for imposing penalty under Section 15HB of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as 'SEBI Act'). Upon hearing the appellant, the learned AO came to the conclusion that the appellant continued to violate the provisions of the Regulations and, therefore, by an order dated November 30, 2017, the learned AO imposed a penalty of Rs. 25 lac in the manner as detailed in the order. Aggrieved by the same appeal No. 303 of 2018 is filed.

3. On the same set of facts, show cause notice was issued to the appellant for violation of Securities and Exchange Board of India

(Investment Advisers) Regulations, 2013 (hereinafter referred to as ‘Investment Advisers Regulations’) and Securities and Exchange Board of India (Research Analysts) Regulations, 2014. Several correspondence prior to the issuing of the show cause notice had ensued between SEBI and the appellant in these proceedings. After collecting the evidence and getting explanation from the appellant, the learned WTM passed an interim order on May 26, 2016. Thereafter, the appellant filed a reply in the proceedings. By the interim order, the appellant was directed to stop working as an Investment Advisor, Research Analyst, and any other activity in the securities market. He was also directed not to divert any fund raised from the investors. Further, directions were issued to withdraw and remove all advertisement, representation, etc. He was also directed to furnish the complete details including the addresses of the clients, participants who had participated in the seminars and deposited money to the tune of Rs. 36,000/- per head. He was also directed to give full details of the scheme “Fatal Attraction”, etc.

4. After hearing the appellant in the proceedings, the learned WTM has by the impugned order provisionally found from the bank statement that the appellant for a period from October 22, 2013 to April 20, 2016 has collected an amount of Rs. 7,35,06,557/-. In the circumstances, by the impugned order dated March 16, 2018, the

learned WTM issued several directions to the appellant as detailed in the order. For facility, directions in paragraph No. 48 of the impugned order is extracted hereunder :-

“48. Therefore, I, in exercise of the powers conferred under section 19 of the SEBI Act read with sections 11(1), 11(4), and 11B of the SEBI Act, hereby issue the following directions:

a. Mr. Anirudh Sethi shall forthwith refund the money received from its clients as fees/profit sharing/compensation in any other form, in respect of its investment advisory activities and unregistered research analyst services.

b. Mr. Anirudh Sethi shall issue public notice in all editions of two National Dailies (one English and one Hindi) and in one local daily with wide circulation, detailing the modalities for refund, including the details of contact persons such as names, addresses and contact details, within 15 days of this Order coming in to effect.

c. There payments to the clients shall be effected only through Bank Demand Draft or Pay Order both of which should be crossed as “Non-Transferable” or through any other appropriate banking channels with clearly identified beneficiaries.

d. Mr. Anirudh Sethi is directed not to divert any funds raised from investors, kept in bank account(s) and/or in his custody, except for the purpose of refunds to the clients. The Banks and Depositories are directed that no debit shall be made, without permission of SEBI, in respect of the bank accounts and demat accounts, held jointly or severally, by Mr. Anirudh Sethi.

e. After completing the aforesaid repayments, Mr. Anirudh Sethi shall submit a certificate from a peer reviewed Chartered Accountant who is in the panel of any public authority or public institution, within a

period of 3 months from the date of service of this order. For the purpose of this Order, a peer reviewed Chartered Accountant shall mean a Chartered Accountant, who has been categorized so by the Institute of Chartered Accountants of India ("ICAI") holding such certificate.

f. In case of failure of Mr. Anirudh Sethi to comply with the aforesaid directions, SEBI, on the expiry of three months period from the date of this Order may recover such amounts, from Mr. Anirudh Sethi as specified in paragraph 48(a) of this Order, in accordance with section 28A of the SEBI Act including such other provisions contained in securities laws.

g. Mr. Anirudh Sethi is directed not to, directly or indirectly, access the securities market, and is prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly in whatsoever manner, till the expiry of 4 years from the date of refund. Mr. Anirudh Sethi is also restrained from associating with any listed public company and any public company which intends to raise money from the public, or any intermediary registered with SEBI till the expiry of 4 years from the date of refund.

h. Mr. Anirudh Sethi shall not undertake, either directly or indirectly, investment advisory services, research analyst services or any activity in the securities market without obtaining a certificate of registration from SEBI as required under the securities laws after the expiry of period of debarment as mentioned in paragraph 48(g).

i. The above directions shall come into force with immediate effect.”

5. Aggrieved by the said order, appeal No. 390 of 2018 is filed.

6. We have heard Mr. J. P Sen, the learned senior counsel with Mr. Vinay Chauhan, Mr. K. C. Jacob, the learned counsel for the

appellant and Mr. Kumar Desai, the learned counsel with Mr. Manish Chhangani, Mr. Anubhav Ghosh, Mr. Ravishekhar Pandey, the learned counsel for the respondent through video conference.

7. The charge against the appellant as can be seen from the record of both the appeals is that he was offering investment advice to the investors upon invent of subscription through his website www.anirudhsethireport.com. Through his own Twitter handle, he also used to provide top securities tips as well as tips from trading consideration. Some of his tweets allegedly heavily created panic/sensation among the investors. The appellant, had disowned the ownership of the website or the Twitter handle though the registration service provider - System Solutions - had provided all the details to respondent SEBI during the investigation. The correspondence between the appellant and the respondent SEBI ultimately resulted into collection of copies of the income tax returns of the appellant for the relevant three years which clearly shows that the appellant has described himself in the income tax return as investment advisor. In the circumstance, though initially the appellant before us initially made an attempt to argue before us that he was not acting as an investment advisor, ultimately submitted that though he was acting as such, the amount arrived at by the learned WTM is Rs. 7,35,06,557/- as detailed (supra) is patently wrong. He

made a submission before us that he was ready to pay a penalty of Rs. 25 lac but the amount arrived at by the learned WTM in fact is only Rs. 11,52,000/- as can be seen from the certificate issued by CA as annexed by him as 'Exhibit 1' to the additional affidavit filed by him on July 31, 2019. He further submitted that the direction of the learned WTM of debarring him for a certain period from giving investment advice and to permanently debar him from accessing the securities market is drastic one. Instead he submitted that he may be debarred till he refund of the money i.e Rs. 11,52,000/- to the investors and till he obtains the regular registration under the Investment Advisory Regulations.

8. Upon hearing both the sides, we find that the learned WTM in paragraph No. 44 of the impugned order has arrived at the figure of Rs. 7,35,06,557/- by taking into consideration the amount credited in the appellant's bank account from October 22, 2013 till April 20, 2016. The WTM reasoned that in the absence of details of segregation of the fees received from the global and Indian market, a conduct of the seminars workshops despite the particulars having been sought from the appellant, it would be appropriate to refund the entire amount credited in the bank account of the appellant for the said period.

9. On the other hand, the appellant has annexed to his additional affidavit referred (supra), the certificate issued by chartered accountant MJM Patel & Company in which segregation of the income for a period from October 22, 2013 to April 20, 2016 is given. The CA has certified that a subscription amount for the said period would come to Rs. 11,52,000/- and other income would be Rs. 7,29,51,012/-. The certificate gives the details of each of the entry in the bank account like interest on FDR, loan, rent, other income, etc.

10. The copies of the income tax returns collected by the respondent SEBI and also additionally added to the respondent's written note would show that during the relevant period the appellant had income from house property, income from capital gains, income from other sources and the income from business or profession.

11. Upon considering all these facts, in our view, the learned WTM for want of cooperation from the appellant in segregating the income from the appellant had wrongly directed that the entire amount shown as credit in his bank account i.e. Rs. 7,35,06,557/- be refunded to the clients of the appellant. We find that the said direction has not dealt with the segregation of credit entries in bank account towards various heads of income (supported by the income tax returns on record) albeit for want of co-operation of the appellant.

We also further found that though the appellant before SEBI was adamant in not providing the particulars as sought by the respondent SEBI, since the issue is only of the non-registration of the appellant as an investment advisor, debarring him for a period of four years from the date of the refund of the amount to the subscribers, clients, etc. is harsh.

12. We further find that the amount collected by the appellant is of the period from 2013 to 2016 from various clients in the nature of subscription, towards seminar etc. The amount is retail amount, collected from numerous investors and that now it would not be practical to trace these subscribers/ clients and to refund the amount to them.

13. In view of the above facts and in our view, the following order would meet the ends of justice.

ORDER

14. Appeal No. 303 of 2018, impugning the order of the AO imposing a penalty of Rs. 25 lac is hereby dismissed without any order as to costs. The appellant is directed to deposit the said amount within a period of two months if not deposited earlier.

15. Appeal No. 390 of 2018 is partly allowed. The order of the learned WTM directing to repay an amount of Rs. 7,35,06,557/- is hereby set aside. Instead the case is remitted back to the learned WTM for arriving at an exact figure in the light of the material that would be supplied by the appellant to the learned WTM. This exercise shall be carried out by the WTM within four months from the date of deposit by the appellant as per this order. Upon arrival at a specific amount, the directions be issued by the learned WTM that the said amount arrived at be credited by the appellant to the Investors Protection and Education fund established by the respondent SEBI in terms of Sub-section 5 of Section 11 of the SEBI Act upon deduction of Rs. 12 lacs to be deposited by the appellant vide the directions being issued vide paragraph no. 16.

16. In the meantime, the appellant is directed to credit an amount of Rs. 12 lacs to the said fund within a period of two months from the date of this order.

17. He is further directed to deposit an amount of Rs. 20 lacs with the respondent SEBI within a period of two months from the date of this order which shall be deposited by SEBI in an interest bearing account. The amount there from shall be adjusted towards further appropriation of the amount if any to be arrived at by the WTM vide

direction issued at paragraph no. 15 above. Excess amount if any shall be refunded.

18. The order of the learned WTM prohibiting the appellant from accessing the securities market for a period of four years from the date of the expiry of the date of refund is hereby set aside instead it is hereby directed that the period shall expire upon deposit of the amount (12 lacs + 20 lacs) as directed vide paragraphs no. 16 and 17 above.

19. In the similar manner, the other directions in paragraphs 48(g) and 48(h) of the impugned order shall also stand modified to the date of deposit of the amount referred in paragraph 18 above, and upon obtaining certificate of registration from SEBI to carry investment advisory services, research analysis services, etc.

20. Upon failure to deposit the amount of Rs. 32 lacs within the period as directed above the impugned order of the WTM shall stand revived.

21. The appeals are accordingly disposed of in terms of the aforesaid directions without any order as to costs.

22. The present matter was heard through video conference due to Covid-19 pandemic. At this stage it is not possible to sign a copy of

this order nor a certified copy of this order could be issued by the Registry. In these circumstances, 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. Parties will act on production of a digitally signed copy sent by fax and/or email.

Justice Tarun Agarwala
Presiding Officer

Justice M. T. Joshi
Judicial Member

29.07.2021
PTM