
Multibagger Securities Research & Advisory Private Limited & Ors. Vs Securities and Exchange Board of India

Appeal No. 103 of 2023

Court: Securities Appellate Tribunal Mumbai

Date of Decision: Jan. 24, 2025

Acts Referred:

SEBI (Portfolio Managers) Regulations, 2020 & Regulation 7(2),(8)

Citation: (2025) 01 SEBI CK 0002

Hon'ble Judges: P. S. Dinesh Kumar Presiding Officer, Meera Swarup Technical Member
,Dheeraj Bhatnagar Technical Member

Bench: Full Bench

Advocate: Manish Goel, Sumit Rai, Mihir Mody, Yash Sutaria ,Tushar Bansode

Final Decision: Dismissed

Judgement

The present appeal has been filed by Multibagger Securities Research & Advisory Pvt. Ltd. & Ors. (MSRAPL & Appellants) against order dated

November 18, 2022 passed by Securities and Exchange Board of India (SEBI / Respondent) in terms of which the application filed by MSRAPL for

registration as Portfolio Manager (PM) was rejected and MSRAPL and its directors / promoters, namely, Sh. Manish Kumar Goyal (MKG) and Sh.

Shailesh Goyal (SG) were held to be not fit and proper persons for grant of the registration as Portfolio Manager. Further, MSRAPL was

directed not to apply for fresh registration as Portfolio Manager for a period of five years from the date of the order.

2. Brief facts of the case are as under:- MSRAPL, had, submitted to the Respondent,an application for registration as Portfolio Manager on

October 30, 2020. MKG is 80% shareholder and SG 20% shareholder in MSRAPL. MKG had been proposed to be the Principal Officer for the

proposed PM activity. MSRAPL already held registration with SEBI as an Investment Advisor (IA) since May 29, 2017 and MKG was also

registered with SEBI as Research Analyst since May 16, 2017.

2.1 While scrutinizing the application of MSRAPL for registration as PM, SEBI found out that MKG did not fulfill the criteria under Regulation 7(2)(d)

(ii) of SEBI (Portfolio Managers) Regulations, 2020, which required the Principal Officer to have at least five years' experience in "related

activities in the securities market including in a portfolio manager, stock broker, investment advisor, research analyst or as a fund manager".

Accordingly, SEBI sought further information and supporting documents from MSRAPL.

2.2 MSRAPL submitted on February 16, 2021, information about MKG's employment with M/s. Maco Securities Pvt. Ltd. (Maco for short) for

the period August 2004 to May 2006. In its application, MSRAPL had not mentioned about this work experience and had given the experience details

from June 2006 onwards.

2.3 The Respondent found out that the veracity of supporting documents along with Form 16 could not be established and asked for further documents

like bank statements of MKG as proof of salary drawn from Maco. The Respondent further called from M/s Sun Pharmaceutical Ltd. (SPIL),

(erstwhile Ranbaxy Laboratories Ltd.) where MKG had worked from June, 2006 to January, 2010, documents submitted by MKG to SPIL including

relieving letter / experience certificate, being his previous employer. SPIL submitted documents / information, which indicated that MKG had worked

with two CA firms, Mitra Gupta & Agarwal, Delhi and S.C. & Associates, Delhi " during the period August 2005 to April 4, 2006 and April 5, 2006

to June 18, 2006, respectively. Further, Respondent also asked MSRAPL to submit an undertaking that the proposed Principal Officer MKG will

surrender his Research Analyst registration with SEBI and relinquish his position as Principal Officer in MSRAPL as Investment Advisor so that

independence of proposed activities and avoidance of conflict of interest could be ensured while maintaining arms' length distance between

MSRAPL's present and proposed activities.

2.4 The Respondent concluded that MSRAPL's submissions regarding experience with Maco was misleading as he was actually working with CA

firms based in Delhi and not with Maco, which was based at Bangalore. Further, they held the MSRAPL's reply dated August 18, 2021 on the

Undertaking requirement as not logical and counter-intuitive. In view of the above, the Respondent concluded that MSRAPL was not a "fit and

proper" person to be registered as a Portfolio Manager and issued notice dated March 31, 2022 to MSRAPL to show cause as to why the application

for registration as PM may not be rejected. MSRAPL made written submission and got opportunity of inspection of relevant documents and personal

hearing. Based on the material on record, the SCN and reply / submissions of MSRAPL, the impugned order came to be passed on November 18,

2022.

3. We have heard Shri Manish Goel, Appellant in person and Shri Sumit Rai, learned counsel for the Respondent.

4. Before us, the Appellants' plea was that the rejection of their application for registration as PM and declaration of the Appellants and its directors

as not fit and proper is an act of vengeance on part of the Respondent. The Appellants had complained to the Chairman, SEBI and Finance

Ministry regarding the delay in processing of their application and due to these complaints, the Respondent started harassing them which finally

culminated in passing of the impugned order.

4.1 Further, claiming that while the SCN only sought reply as to why the application for registration as PM should not be rejected, the impugned order

declared them as not fit and proper and barred them from re-applying for further five years, the appellant sought that the impugned order should

be struck down. Refuting the Respondent's finding about the Appellant's principal officer (MKG) not having requisite experience based on the

evidence submitted by SPIL, Shri Goel submitted that the Appellant had submitted three concrete evidences in shape of experience certificate, Form

No. 16 and e-mail confirmation from Maco to indicate that MKG had more than adequate work experience as mandated under Regulation 7(2)(d)(ii)

of SEBI (PM) Regulations, 2020. It was submitted that the Respondent did not accept the direct relevant experience of approximately four years as

Research Analyst and Investment Advisor, therefore, the Appellant had to give Maco experience. SPIL was not able to give the Maco's details as

the Appellant had not submitted the same to them as experience in Maco was not a relevant experience with respect to the job profile there. The

Respondent's dependence on SPIL's confirmation of work experience at two CA firms in Delhi is flawed as firstly it is possible for the Respondent's

to influence them being a listed Company and secondly, the timing of second e-mail confirmation received from SPIL is highly suspect. The Appellant

also pleaded that principles of natural justice were not complied by the Respondent as the allegation and information based on which the impugned

order was passed, was provided much after the personal hearing was given. Further, the Respondent ignored the fact that at the time of passing the

impugned order, the experience of the Appellants as Registered Investment Advisor with the Respondent itself was of more than five years.

5. On the other hand, the Learned Counsel for the Respondent argued that the Respondent has acted within the realm of the legal framework laid out

for grant of registration as PM. The SEBI (PM) Regulation, 2020 lay down the process of registration as PM. Regulation 6 thereof allows for calling

for further information, Regulation 7(1) lays down that all matters relevant to activities of PM can be considered, Regulation 7(2)(d)(ii) lays down the

requirement of 5 years' experience in related activities in securities market for the Principal Officer of the applicant. Regulation 7(2)(j) states that the

applicant must be a fit and proper person and Regulation 8 states that the criteria for fit and proper person to be considered would be as

contained in Schedule - II of SEBI (Intermediaries) Regulation, 2008.

5.2 Further, as per Schedule II of SEBI (Intermediaries) Regulations, 2008, "integrity, reputation and character" of the person is relevant to

determine whether an applicant is "fit and proper". While examining the application of the Appellants, SEBI acted within the four walls of the

provisions of the regulations laid down, in observing that MKG did not fulfill the criteria that require a Principal Officer of an Applicant to have

experience of at least 5 years in related activities in the securities market. Accordingly, relevant supporting documents were sought towards work

experience of the proposed Principal Officer, MKG. The details submitted by MSRAPL included MKG's employment with Maco from August 2004

to May, 2006, which were found contradictory by the Respondent as information received from SPIL indicated that MKG was working in two CA

firms at Delhi during August, 2005 to June, 2006. Thus, the Respondent was correct to arrive at a conclusion that by submitting false and misleading

information to SEBI, the Appellants failed to meet the criteria of "integrity, reputation and character" and could not be held to be "fit and

proper" persons so as to allow registration as PM.

5.3 Further, it was submitted that the Appellants have never denied employment of MKG in the two CA firms at Delhi and at Maco in Bangalore but

have sought to suggest that MKG had been employed in more than one firm at different locations at the same time. This suggests that the Appellant

believes that the information submitted by SPIL is correct and therefore the Appellant's stance is contradictory. Also, the Respondent is required to

take into account the "integrity, reputation and character" while applying the eligibility criteria of fit and proper on the director / promoter to the

Applicant MSRAPL. Therefore, in order to determine whether MSARPL is a "fit and proper" person, the criteria were extended to MKG and SG.

Considering the veracity of the documents submitted for work experience as inconclusive, the Applicants were asked to submit bank statements,

which they failed to do.

5.4 The Learned Counsel for the Respondent further stated that the principles of natural justice were duly followed by Respondent by giving them

adequate opportunities for providing documents, granting opportunity to reply to SCN and allowing inspection of documents and opportunity of personal

hearing. The Learned Counsel vehemently denied that the registration application was rejected on account of vengeance on part of the Respondent.

The Appellant have time and again wrongly attributed motives to the Respondent and have failed to submit any proof in support of their stance. He

submitted that the rejection of application of the Appellants for registration as PM is based on material available on record and a well-reasoned order

has been passed by the Respondent. Pointing out to various criminal cases / complaints filed by MKG against the officials of SEBI, the Learned

Counsel for Respondent submitted that the general conduct of MKG confirms that SEBI's conclusion of the Applicant and its directors / promoters

being not fit and proper for getting registration as PM was a correct decision.

6. Having heard the Appellant in person and Learned Counsel for Respondent and having seen the relevant provisions, we have no hesitation in

agreeing with SEBI that it has wide powers to call information documents etc. to determine whether an Applicant seeking registration as PM or any

other intermediary is fit and proper person. We also place reliance on this Tribunal's observations as quoted in paragraph 28 of the impugned

order in the matter of 63 Moons Technologies Ltd. vs. SEBI in Appeal No. 500 of 2020 decided on April 15, 2021.

6.1 In the instant case, the main area of contention between the parties is in relation to the work experience of MKG, as the proposed Principal

Officer of the Appellant Company who is also 80% equity shareholder in MSRAPL. In our view, this is a crucial eligibility criteria and there should be

no ambiguity regarding the Principal Officer of the Applicant meeting this criteria. We note that the Applicant did not originally provide the information

regarding the work experience of MKG at Maco for consideration against work experience criteria. The Appellants did not give any satisfactory

reason for this omission at the time of submitting application. As this experience in a broking firm would definitely fit in the desired criteria of

related authorities in the securities market, its omission naturally raises the question as to why the same was not given. In our view, Respondent

was correct in seeking verification of this work experience by calling for further information from the Applicant and later on not getting satisfactory

responses, by seeking confirmation from a previous employer (SPIL). Once the discrepancy in work experience was noticed, the Respondent had to

conclude the disclosure as false and misleading information with regard to work experience of MKG. We note that the Appellant has not denied or

disputed the information supplied by SPIL. He went on to argue that he worked at two firms at the same time though the firms were located in

different cities. The moot question here is as to why the appellant did not disclose MKG's simultaneous work experience in Maco at Bangalore. In

our view, the explanation offered by the Appellant is implausible, if not improbable.

6.2 As far as the plea taken by Appellant regarding denial of natural justice is concerned, we are satisfied that more than adequate opportunities were

given to the Appellant to prove their case. Enough time was given for filing reply and to furnish further information to substantiate their claim.

Documents relied upon were furnished to the Appellant and personal hearing were given. Regarding the plea taken up by the Appellant that personal

hearing should have been given after supply of relevant documents, we note that the Appellant wrote back to the Respondent about the documents

and, therefore, are satisfied that the Appellant could get sufficient opportunity to put across their views / give explanation/ information to the

Respondent.

6.3 Regarding the allegations made by the Appellant that the impugned order was a result of vengeance on part of the Respondent as the Appellant

had made complaints to the Chairman, SEBI and the Finance Ministry, we note that the allegation remained totally unsubstantiated both in the oral

arguments made by the Appellant and in the written submission. In our view, such bald allegations made against a regulator and its officials points to

irresponsible and immature behavior on part of the Appellant and deserves no consideration.

7. In view of the aforesaid, we do not find any infirmity in the impugned order. The appeal fails and is dismissed with no order as to costs.

8. Pending Interlocutory applications(s), if any, stand disposed of.

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