

**BEFORE THE APPELLATE AUTHORITY
(Under the Right to Information Act, 2005)
SECURITIES AND EXCHANGE BOARD OF INDIA**

Appeal No. 5134 of 2022

Anita Lodha	:	Appellant
	Vs	
CPIO, SEBI, Mumbai	:	Respondent

The aforesaid appellant had filed an application dated April 24, 2022 (received by SEBI on April 29, 2022) under the Right to Information Act, 2005 (“**RTI Act**”), with respect to the Show Cause Notice (SCN) dated March 28, 2022 issued in the matter of alleged dealings in Illiquid Stock Options at BSE, which is ongoing. The respondent, by a letter dated May 23, 2022, responded to the application filed by the appellant. The appellant filed an appeal dated June 22, 2022 (received by the Office of Appellate Authority on July 06, 2022).

With

Appeal No. 5135 of 2022

Mahendra Kumar Karnani	:	Appellant
	Vs	
CPIO, SEBI, Mumbai	:	Respondent

The aforesaid appellant had filed an application dated April 13, 2022 (received by SEBI on April 13, 2022) under the Right to Information Act, 2005 (“**RTI Act**”), with respect to the SCN dated March 07, 2021 issued in the matter of alleged dealings in Illiquid Stock Options at BSE, which is ongoing. The respondent, by a letter dated May 05, 2022, responded to the application filed by the appellant. The appellant filed an appeal dated July 01, 2022 (received by the Office of Appellate Authority on July 06, 2022).

With

Appeal No. 5136 of 2022

Pramod Kumar Agarwal HUF	:	Appellant
	Vs	
CPIO, SEBI, Mumbai	:	Respondent

The aforesaid appellant had filed an application dated May 01, 2022 (received by SEBI on May 04, 2022) under the Right to Information Act, 2005 (“**RTI Act**”), with respect to the SCN dated April 11, 2022 issued in the matter of alleged dealings in Illiquid Stock Options at BSE, which is ongoing. The respondent, by a

letter dated May 17, 2022, responded to the application filed by the appellant. The appellant filed an appeal dated June 22, 2022 (received by the Office of Appellate Authority on July 06, 2022).

**With
Appeal No. 5137 of 2022**

Aayush Chandak	:	Appellant
	Vs	
CPIO, SEBI, Mumbai	:	Respondent

The aforesaid appellant had filed an application dated April 01, 2022 (received by SEBI on April 11, 2022) under the Right to Information Act, 2005 (“**RTI Act**”), with respect to the SCN dated February 11, 2022 issued in the matter of alleged dealings in Illiquid Stock Options at BSE, which is ongoing. The respondent, by a letter dated May 05, 2022, responded to the application filed by the appellant. The appellant filed an appeal dated June 22, 2022 (received by the Office of Appellate Authority on July 06, 2022).

**With
Appeal No. 5138 of 2022**

Rahul Gupta	:	Appellant
	Vs	
CPIO, SEBI, Mumbai	:	Respondent

The aforesaid appellant had filed an application dated April 05, 2022 (received by SEBI on April 11, 2022) under the Right to Information Act, 2005 (“**RTI Act**”), with respect to the SCN dated December 31, 2021 issued in the matter of alleged dealings in Illiquid Stock Options at BSE, which is ongoing. The respondent, by a letter dated May 05, 2022, responded to the application filed by the appellant. The appellant filed an appeal dated July 10, 2022 (received by the Office of Appellate Authority on July 13, 2022).

**With
Appeal No. 5139 of 2022**

Rishi Pal Singh HUF	:	Appellant
	Vs	
CPIO, SEBI, Mumbai	:	Respondent

The aforesaid appellant had filed an application dated January 03, 2022 (received by SEBI on January 07, 2022) under the Right to Information Act, 2005 (“**RTI Act**”), with respect to the SCN dated September 17, 2021 issued in the matter of alleged dealings in Illiquid Stock Options at BSE, which is ongoing. The respondent, by a letter dated February 01, 2022, responded to the application filed by the appellant. The

appellant filed an appeal dated July 10, 2022 (received by the Office of Appellate Authority on July 13, 2022).

**With
Appeal No. 5140 of 2022**

Anushruti Agarwal : Appellant

Vs

CPIO, SEBI, Mumbai : Respondent

The aforesaid appellant had filed an application dated April 06, 2022 (received by SEBI on April 13, 2022) under the Right to Information Act, 2005 (“**RTI Act**”), with respect to the SCN dated March 21, 2022 issued in the matter of alleged dealings in Illiquid Stock Options at BSE, which is ongoing. The respondent, by a letter dated May 05, 2022, responded to the application filed by the appellant. The appellant filed an appeal dated July 10, 2022 (received by the Office of Appellate Authority on July 13, 2022).

I note that under Section 19(1) of the RTI Act, an aggrieved person may prefer the first appeal within thirty days from the receipt of the response from the CPIO of the concerned public authority. I note that all the first appeals have been made after the last date permissible under the RTI Act. The appellants neither made a request for condoning the said delay in filing the appeals nor made any submission explaining the reasons which caused the delay. Considering the absence of a request for condoning the delay and any valid reason that prevented the appellants from filing the appeals in time, I consider these appeals as time barred and hence, liable to be dismissed on that count. Notwithstanding the said observation, I have considered the appeals on merit. I have perused the applications, the responses and the appeals and find that the matters can be decided based on the material available on record.

ORDER

1. I have perused the above mentioned applications, responses and appeals filed by the appellants. In all the applications, the appellants have sought similar information pertaining to respective Show Cause Notices issued by various Adjudicating Officers, SEBI, in the matter of alleged dealings in Illiquid Stock Options at BSE. I note that the Adjudication Proceedings in the said matter, are ongoing. Further, I find that identically worded appeals (except date and number of Show Cause Notice, name of the company whose options were traded, date of trades and the details of counterparties), have been filed by the appellants in the matter of dealings in illiquid stock options at BSE. I also note that similar appeals had been filed earlier before this forum.

2. **Ground of appeals-** On perusal of the appeals, it appears that the appellants are not satisfied with the response provided by the respondent with respect to query numbers 1 to 10 of their respective applications. As the grounds of appeals and issues involved are identical, I am dealing with all the aforesaid appeals, in this order.
3. The appellants, in their appeals, have made request for personal hearing. On the issue of providing an opportunity of hearing by the First Appellate Authority (FAA) under RTI Act, a full bench of Hon'ble CIC in *Bombay Stock Exchange Limited vs Securities and Exchange Board of India* (File No. CIC/SM/A/2011/001687) observed that *"It is not practical to lay down an inflexible rule that PIOs and AAs will always offer an opportunity of hearing to the parties, let alone to the 3rd party. They may do so as per their discretion, keeping in view the complexity of legal and factual issues involved, without forgetting that timelines are to be adhered to, being the essence of the Act."* Therefore, it is noted that there is no specific requirement under the provisions of the RTI Act, of providing a personal hearing by the FAA and that the discretion to give hearing to the appellant shall be exercised considering the complexity of the issues involved and the timelines specified under the RTI Act. In this context, reliance is also placed on the decisions of the Hon'ble CIC in the matters of *Mr R.K Jain vs. UPSC* (Decision dated March 10, 2014) and *Mr. N. Saini vs. CPIO & Chief (RTI)* (Decision dated January 25, 2018). In view of the above observations, I have carefully considered the applications, the responses and the appeals. I note that the grounds of appeal are self-explanatory. Hence, the matters can be decided based on the material that is available on record.
4. **Query numbers 1, 2, 3, 4 and 6-** The appellants, vide query number 1, *inter alia*, sought the Investigation Report along with annexures as mentioned in the respective Show Cause Notices. Vide query numbers 2 and 3, the appellants sought complete market order log files and trade log files executed in the contracts of the companies on certain dates. The appellants, vide query number 4, sought copy of all correspondences exchanged with their counter parties. Vide query number 6, the appellants sought copy of statements of all persons recorded during the course of investigation conducted by SEBI in the matter.
5. The respondent, in response to the aforesaid queries, informed that the information sought by the appellant pertains to the internal functioning of SEBI and disclosure of which may hamper the decision making by SEBI in its supervisory and regulatory role. Further, the information sought is exempt from disclosure under Sections 8(1)(d) and 8(1)(e) of the RTI Act as the same is available to SEBI in fiduciary capacity and includes commercial information of other entities which is confidential in nature, the disclosure of which could harm their competitive position. The respondent also informed that all documents relied upon in the quasi-judicial proceedings are provided to the noticees along with the Show Cause Notices. The appellants,

in their appeals, *inter alia*, submitted that the requested information does not pertain to the internal functioning of SEBI and that the information cannot be held in fiduciary capacity. The appellants also submitted that the statements of counter parties will not harm the competitive position of counter parties.

6. I have perused the queries and the responses provided thereto. I do not find any reason to disbelieve the observation of the respondent that the requested information may contain information which is available to SEBI in fiduciary capacity and include confidential information which is commercial in nature. I note that in Writ Petition (Civil) Nos. 8396/2009, 16907/2006, 4788/2008, 9914/2009, 6085/2008, 7304/2007, 7930/2009 and 3607 of 2007, the Hon'ble High Court of Delhi, held that the 'person' referred to in section 8(1) (e) of the RTI Act will include a public authority. It also held that: "*In a fiduciary relationship, the principal emphasis is on trust, and reliance, the fiduciary's superior power and corresponding dependence of the beneficiary on the fiduciary. It requires a dominant position, integrity and responsibility of the fiduciary to act in good faith and for the benefit of and to protect the beneficiary and not oneself*". Further, the Hon'ble CIC, in the matter of *Mr. Ashok Kumar Rajak vs. CPIO, SEBI*, (order dated December 21, 2021), held that "*Further the details such as investigation report, file noting, directions and various communication involves with the third party information which is received from other agencies is being held by them in fiduciary capacity hence the same is barred from disclosure under section 8(1)(e) & (j) of the RTI Act, 2005.*" Further, I note that investigation report is the culmination of the part in the process of investigation wherein the information is sought, gathered and analyzed to crystallize the preliminary charges for which the entities/individuals are issued show cause notices. Such information gathered by SEBI may include information relating to commercial and business interest as submitted by the entities/individuals against whom the investigation is conducted by SEBI. Such information is summoned by SEBI in the discharge of its regulatory function and in its authority as a regulator of the securities market. Hence, the information thus called for, is provided by the entity irrespective of whether the same is confidential or in the nature of commercial confidence. Under the provisions of the law in force at the time, it is incumbent on the entities/individuals during investigation to provide the requisite information lest they be visited upon with the consequences of non-compliance with the summons issued by SEBI in the matter. Hence it is the duty of the entities/individuals during investigation to provide the requisite information to SEBI without any recourse to the claim of privacy or confidentiality. Furthermore, I note that under the scheme of the SEBI Act, 1992, Section 11C empowers SEBI to investigate and based on the investigation, appropriate actions are initiated in accordance with the provisions of the SEBI Act. Further, Section 11C embarks a duty upon every person to provide the information called for by Investigating Officer and any failure thereto, is a punishable Act under Section 11C (6) of SEBI Act. Further, such person by virtue of Section 11C of SEBI Act, is bound to disclose said information to SEBI, even though disclosure of such information is

confidential and against business or commercial interest of such person or an entity relating to which the information is provided to the Investigating Authority. I note that such kind of information received by SEBI is third party information and the same is received in its fiduciary capacity. The said information may also contain personal information of other entities. I note that similar contentions were accepted by the Hon'ble CIC in the matter of *Arun Kumar Agrawal vs. The CPIO, SEBI* (order dated August 04, 2020). Further, the respondent has categorically informed that all documents relied upon in the quasi-judicial proceedings are provided to the noticees along with the Show Cause Notices. In view of the same, I do not find any deficiency in the responses.

7. **Query number 5-** the appellants, vide query number 5, sought the following information-

“5. Please inform what action has been taken against the BSE for failure to check reversal trades as alleged in the SCN.”

8. In response to the aforesaid query of the applicants, the respondent informed that necessary direction has been issued to BSE. The appellants, in their appeals, sought the details of direction issued to BSE and their response thereto.
9. I have perused the query and the response provided thereto. I find that the respondent has adequately addressed the query by providing the information available with him. Hence, no further intervention is warranted at this stage.
10. Further, I note that the appellants, in their appeals, sought information regarding details of direction issued to BSE and their response thereto. I find that these requests were raised by the appellants for the first time in these appeals. As held by the Hon'ble CIC in *Harish Prasad Divedi vs. Bharat Petroleum Corporation Limited* (decided on January 28, 2014), an information seeker cannot be allowed to expand the scope of his RTI enquiry at appeal stage. Accordingly, I find that the said requests do not warrant consideration at this stage.
11. **Query numbers 7 and 10-** The appellants, vide query number 7, sought details of the complaint(s) received by SEBI and stock exchange with respect to their dealings in the illiquid stock options at BSE. Vide query number 10, the appellants sought the details of alerts/triggers generated by stock exchange/SEBI w.r.t their dealings in the said stock options.
12. In response to the aforesaid queries, the respondent informed that as on date, there are no complaints in SCORES received against the appellants with respect to dealings in the matter of illiquid stock options at BSE. Further, the respondent informed that, SEBI has initiated proceedings against the entities who have

engaged in reversal trades in illiquid stock options segment during the period April 01, 2014 to September 30, 2015. Further, it was informed that the appellants had allegedly engaged in reversal trade in illiquid stock options during the said period. The appellants, in their appeals, *inter alia*, submitted that the query number 10 has not been dealt by the respondent.

13. On consideration, I find that the respondent has addressed both the query numbers 7 and 10 raised by the appellants. I note that the respondent has provided the information available with him. Further, it is reiterated that all documents relied upon in the quasi-judicial proceedings are provided to the noticees along with the Show Cause Notices. Accordingly, I do not find any deficiency in the response.
14. **Query number 8-** The appellants, vide query number 8, *inter alia*, sought the details of persons/entities who have been induced to sell/purchase the alleged illiquid stock options at BSE as a result of their dealings in the said stock options.
15. The respondent, in response to the aforesaid query, informed that the requested information is exempt from disclosure under Section 8(1)(h) of the RTI Act since the proceedings are in progress in the matter of Illiquid Stock Options and the matter has not yet reached its logical conclusion. The respondent also informed that disclosure of any information at this stage may impede the process of investigation/prosecution of offenders. The appellants, in their appeals, *inter alia*, submitted that disclosure of any information at this stage will not impede the process of investigation.
16. I have perused the query and the response provided thereto. I note that the enforcement proceedings in the subject matter of the application are ongoing and the same has not reached a logical conclusion. In this context, I note that the Hon'ble CIC, in the matter of *Smt. Pushpa Devi Mohita vs. SEBI* (order dated February 08, 2022), held that " *The Commission observes that the information sought by the appellant is submitted to SEBI which is a quasi-judicial body for examination and the same has not yet reached a logical conclusion, therefore the respondent has denied the information under section 8(1)(h) and as per the said provisions of the RTI Act, such information cannot be provided to the appellant which would impede the process of investigation.*" In view of these observations, I do not find any deficiency in the response.
17. **Query number 9-** The appellants, vide query number 9, sought the documents/statements showing and establishing their intention to 'manipulate' price or create artificial volume of the said stock options at BSE.

18. The respondent, in response to the aforesaid query, informed that the query is in the nature of seeking clarification/ opinion and accordingly, cannot be construed as “information”, as defined under section 2(f) of the RTI Act.
19. On perusal of the query, it appears to be in the nature of seeking clarification/opinion from the respondent. I note that the respondent is not supposed to create information; or to interpret information; or to furnish clarification to the appellant under the ambit of the RTI Act. I find that the said queries cannot be construed as seeking ‘information’ as defined under section 2 (f) of the RTI Act. In this context, reference is made to the matter of *Vineet Pandey vs. CPIO, United India Insurance Company Limited* (Judgment dated January 21, 2021), wherein similar observations were made by the Hon’ble CIC. Further, in the matter of *Shri Shantaram Walavalkar vs. CPIO, SEBI* (Decision dated January 17, 2013), I note that the Hon’ble CIC held: “... we would also like to observe that, under the Right to Information (RTI) Act, the citizen has the responsibility to specify the exact information he wants; he is not supposed to seek any opinion or comments or clarifications or interpretations from the CPIO...”. In view of the said observations, the respondent did not have an obligation to provide such clarification/opinion under the RTI Act.
20. In view of the above observations, I find that there is no need to interfere with the decision of the respondent. The Appeals are accordingly dismissed.

Place: Mumbai

Date: July 14, 2022

ANAND BAIWAR
APPELLATE AUTHORITY UNDER THE RTI ACT
SECURITIES AND EXCHANGE BOARD OF INDIA