

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

Appeal No. 6237 of 2024

Ashok Kumar Agarwala	:	Appellant
	Vs	
CPIO, SEBI, Mumbai	:	Respondent

ORDER

1. The appellant had filed an application dated October 06, 2024 (received by the respondent through RTI MIS Portal) under the Right to Information Act, 2005 (“**RTI Act**”). The respondent, by a letter dated October 29, 2024, responded to the application filed by the appellant. The appellant filed an appeal (Reg. No. SEBIH/A/E/24/00282) dated November 20, 2024. I have carefully considered the application, the response and the appeal and find that the matter can be decided based on the material available on record.
2. **Ground of appeal** – The appellant has filed the appeal on the ground that he was provided incomplete, misleading or false information.
3. **Query nos. 1, 2 and 3 in the application** - The appellant, vide his query nos. 1, 2 and 3 in the application dated October 06, 2024, sought the following information:

“ 1. Please let me know why my complaint reference no. SEBIE/WB24/NORT/009298/1 with the SCORES has been disposed off without giving me any chance to reply?

2. There is nothing sub-Judice towards the Auction difference debit as the TM filled the appeal against the award passed for the excess brokerage charged by the TM and NOT for auction difference debit by the TM in the name of the NSE. Then why my complaint with SCORES for unauthorised Auction debit has been dismissed, which is never been sub-judice?

3. My complaint is not against the TM but is against the NSE who is the ultimate beneficiaries of the excess amount of Auction difference charges recovered from the Investor through its Trading Member named M/s SMIFS Ltd (TM), why the NSE has not given any reply on this?”

4. **Reply of the Respondent** – The respondent, in response to query nos. 1, 2 and 3 in the application, informed that the information sought by the appellant does not pertain to him and the same relates to personal information, the disclosure of which has no relationship to any public activity or interest and may cause unwarranted invasion into the privacy of the individual. The same is, therefore, exempt in terms of section 8(1) (j) of the RTI Act.
5. I have perused the queries and the response provided thereto. I note that that the respondent has denied the requested information under section 8(1)(j) of the RTI Act. I note that the information sought vide query nos. 1, 2 and 3 pertains to SCORES complaint filed by one Sunita Agarwala. In this regard, appellant in his appeal has submitted that the information sought pertain to him. From the perusal of records, I note that even though the SCORES complaint was filed in the name of Sunita Agarwala, the said complaint pertains to Ashok Agarwala. Therefore, I find that the appellant is not a third party with respect to the said complaint. In light of the aforesaid, I find that invocation of section 8(1)(j) of RTI Act for denial of information is not justified. Thus, I find that the aforementioned queries have not been adequately addressed. Accordingly, it would be appropriate to remit the aforementioned queries for reconsideration.
6. **Query nos. 4, 5, 6, 8, 11 and 12 in the application** - The appellant, vide his query nos. 4, 5, 6, 8, 11 and 12 in the application dated October 06, 2024, sought the following information:

“4. How the SCORES/SEBI came to conclusion that the matter is sub-judice?

5. Why the NSE is not providing the details of auction charges?

6. What action the SEBI will take against the NSE for such illegal amount taken from the investors?

.....

8. As the ultimate beneficiary of this illegal excess Auction charges is NSE, hence the NSE should be responsible for this, then why the NSE has not given any clarification for such unauthorised charges taken from the investor?

11. What action the SEBI will take against the NSE and the TM for this illegal activities?”

12. Why the NSE is blindly favouring the TM named SMIFS Ltd?”

7. **Reply of the Respondent** – The respondent in response to query nos. 4, 5, 6, 8, 11 and 12 informed that queries of the appellant are in the nature of seeking clarification/opinion. Accordingly, the same cannot be construed as "information", as defined u/s 2(f) of the RTI Act. However, respondent has also

mentioned that for information relating to redressal of investor grievances through SEBI Complaint Redressal System (SCORES) and linking it to Online Dispute Resolution platform, the appellant can refer to SEBI Circular No. SEBI/HO/OIAE/IGRD/CIR/P/2023/156 dated September 20, 2023. The respondent also informed that appellant can refer to SEBI Master Circular SEBI/HO/OIAE/OIAE_IAD-1/P/CIR/ 2023/145 dated July 31, 2023 for "Online Resolution of Disputes in Indian Securities Market" and provided the link for accessing the same.

8. I have perused the queries and the response provided thereto. On consideration, I concur with the response of the respondent that the query nos. 4, 5, 6, 8, 11 and 12 of the appellant are in the nature of seeking clarification/opinion. 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, reliance is placed on the matter of *Azad Singh vs. CPIO, Oriental Insurance Company Limited* (order dated March 23, 2021), wherein, Hon'ble Central Information Commission (hereinafter referred to as "**CIC**") observed that "7. *The Commission, after hearing the submissions of both the parties and after perusal of records, observed that some queries of the appellant are in the nature of seeking explanation/ opinion/ advice/ confirmation/ clarification from the CPIO and he has expected that the CPIO firstly should analyze the documents and then provide information to the appellant. But the CPIO is not supposed to create information; or to interpret information; or to compile information as per the desire of the appellant under the ambit of the RTI Act. As per Section 2(f) of the RTI Act, the reasons/ opinions/ advices can only be provided to the applicants if it is available on record of the public authority. The CPIO cannot create information in the manner as sought by the appellant. The CPIO is only a communicator of information based on the records held in the office and hence, he cannot be expected to do research work to deduce anything from the material therein and then supply it to him*". Notwithstanding the aforesaid, I note that respondent had provided links for accessing relevant circulars/guidelines issued by SEBI w.r.t SCORES and Online Dispute Resolution Platform, which are available on SEBI website. Accordingly, I do not find any deficiency in the response of the respondent.
9. **Query nos. 7 and 10 in the application:** The appellant, vide query nos. 7 and 10 in the application, sought the following information:

"7. What are the rules and regulations of the auction debit to be charged from the investors?"

.....

10. Who is the person concern in the National Stock Exchange of India (NSE) responsible for the RTI replies?"

10. **Reply of the Respondent** – The respondent in response to query nos. 7 and 10 informed that the information sought by the appellant is available in public domain on the website of Exchange.
11. I have perused the queries and the response provided thereto. From the respondent's response, I note that information sought by the appellant is available in public domain. In this context, the Hon'ble Delhi High Court, in the matter of *Registrar of Companies & Ors. Vs. Dharmendra Kumar Garg & Anr.* and the Hon'ble CIC in the matter of *Shri K Lall vs. Shri M K Bagri* (CIC/AT/A/2007/00112, order dated April 12, 2007), *inter alia*, observed that if the relevant information is available in the public domain, the same cannot be said to be information held by the public authority and consequently, there is no obligation to provide such information to an applicant under the RTI Act. Accordingly, I do not find any deficiency in the response of the respondent.
12. However, with regard to query no. 10, I also find it pertinent to cite the decision in *Sanjay Pande v SEBI* (Order dated December 21, 2022), wherein, Hon'ble CIC observed that "*The Commission at the outset clarified that the matter regarding applicability of the RTI Act, 2005 to NSE is at present not settled and is sub judice. The applicability of the RTI Act, 2005 to NSE was affirmed by the Single Bench of the Hon'ble High Court of Delhi in National Stock Exchange v. Central Information Commission, W.P(C) 4748/2007 vide order dated 15.04.2010. However, the division bench of the Hon'ble High Court of Delhi, in National Stock Exchange v. Central Information Commission, LPA 315/2010 vide order dated 04.05.2010, stayed the aforementioned judgment which had interpreted NSE as a "public authority" under the RTI Act, 2005. Hence, the orders cited by the complainant cannot be relied upon by the Commission. More so, in a nutshell, the Commission observed that as per the current legal position, the NSE does not come under the purview of the RTI Act.*"
13. In view of the above, I find that no further intervention of this forum with respect to the aforementioned queries is warranted at this stage.
14. **Query no. 9 in the application:** The appellant, vide query no. 9 in the application, sought the following information:

"9. Please let me know where should the client/investor file the appeal against the closer of the complaint being no. SEBIE/WB24/NORT/009298/1, without giving any chance to the complainant to place his submission?"
15. **Reply of the Respondent** – The respondent in response to query no. 9 informed that the provision of appeal/review of SCORES complaints is embedded in the SCORES platform itself. However, respondent also informed that in case complainants are dissatisfied with redressal of grievance on SCORES, they may

choose to avail the Securities Market Online Dispute Resolution (ODR) mechanism and provided link for accessing the same.

16. I have perused the query and the response provided thereto. On consideration, I find that the respondent has adequately addressed the said query by providing the information available with him. Accordingly, no further intervention of this forum respect to the aforementioned query is warranted.
17. Considering the above observations, I remit the application to the respondent for *de novo* consideration of query nos. 1, 2 and 3 in the application and sending appropriate response to the appellant in terms of RTI Act, within 15 working days from the date of receipt of this order.
18. The appeal is accordingly disposed of.

Place: Mumbai

Date: December 19, 2024

RUCHI CHOJER

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