

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

Appeal No. 5076 of 2022

Jobin J Mathew	:	Appellant
	Vs	
CPIO, SEBI, Mumbai	:	Respondent

ORDER

1. The appellant had filed an application dated April 02, 2022 (received by SEBI on April 06, 2022) under the Right to Information Act, 2005 (“**RTI Act**”). The respondent, by a letter dated May 02, 2022, responded to the application filed by the appellant. The appellant filed an appeal dated May 27, 2022 (received by the Office of Appellate Authority on June 01, 2022). I have perused the application, the response of the respondent and the appeal and find that the matter can be decided based on the material available on record.
2. **Ground of appeal-** On perusal of the appeal, it appears that the appellant is not satisfied with the response provided by the respondent with respect to query numbers 1 to 17 (except query numbers 9 and 13). In view of the submissions made by the appellant in his appeal, I am dealing with the said queries raised by the appellant and the response provided by the respondent, in the following paragraphs.
3. **Query numbers 1, 2, 3, 4, 5, 6, 8, 11, 12 and 14-** The appellant, vide said query, sought the following information-
 1. *Please inform the name of Bank/NBGC and address of bank office in whose favour my 7000 Infosys fully paid shares held in unique client code-2961350 have been illegally pledged by Karvy Stock Broking Ltd.*
 2. *At present who is receiving the dividend declared and paid by Infosys by virtue of these 7000 shares.*
 3. *How many Karvy clients have already got back their shares/securities which have been pledged by Karvy without client's permission due to the intervention of SEBI, Stock Exchanges and Depositories.*
 4. *How many Karvy clients are there, yet to get back their shares/securities as shares could not be released to clients account due to the stay order obtained by Banks/NBFC from Securities Appellate Tribunal (SAT) which has directed to put a freeze on Karvy DP accounts.*
 5. *Kindly Inform the bank/NBFC wise break up of loan amount availed by Karvy by pledging clients shares/securities.*

6. *Kindly inform Bank/NBFC wise break up of market value of pledged shares/securities (closing rate as on 31.03.2022 or on the date of reply under RTI which are still kept and available in Karvy DP account but could not be released to clients due to SAT order to put a freeze on Karvy DP accounts which were used for pledging of client securities.*
 8. *Pls. inform the pending amount of fund balance/cash ledger balance (Excluding pool account shares) payable to Karvy clients as on 31.03.2022.*
 11. *Out of the above as mentioned in Item. No:10, how much amount have been disbursed to Karvy clients in settlement of their claim till 31.03.2022.*
 12. *Please inform the value of assets of Karvy and the amount of free fund balance available excluding those realised through the sale of Karvy Demat accounts, Trading accounts and mutual fund business as mentioned in Item No:10.*
 14. *Please inform the amount of IPF available with stock exchanges as on 31.03.2022.*
4. The respondent, in response to the aforesaid queries, informed that the information sought by the appellant is not maintained by SEBI in the normal course of regulation of securities market. Hence the same is not available with SEBI. The appellant, in his appeal, *inter alia*, submitted that the response is false and misleading. The appellant also alleged that the requested information is available with SEBI in the form of various inspection reports, forensic audit reports and other reports filed by Stock Exchanges and depositories.
 5. I have perused the queries and the response provided thereto. On consideration, I do not find any reason to disbelieve the response of the respondent that the requested information is not available with SEBI as the same is not maintained by SEBI in the normal course of regulation of securities market. In this context, I note that the Hon'ble CIC, in the matter of *Mrigesh Manubhai Thakkar vs. SEBI* (order dated December 28, 2016) observed that "*The Commission observes that the respondents can provide only that information which is existing and available with them and the RTI Act does not mandate it for the respondent authority to create information if it is not collected and collated in the normal course of their duties. The Commission, therefore, does not find any need to intervene in the matter. The appeal is disposed of.*" Similar submissions of the respondent were accepted by the Hon'ble CIC in the matter of *Mr. N. Das vs. CPIO, SEBI* (order dated May 02, 2022). In view of these observations, I do not find any deficiency in the response.
 6. Further, I note that the appellant, in his appeal, has made certain submissions regarding availability of the requested information with SEBI in the form of various inspection reports, forensic audit reports and

other reports filed by Stock Exchanges and depositories. In my opinion, the said submissions are baseless and unsubstantiated. In view of these observations, I do not find any merit in the said submissions.

7. **Query number 7-** The appellant, vide query number 7, sought the following information-

7. Inform the relevant guidelines or policies regarding the utilization/ settlement of the amount received or realized over and above the loan amount in the event of invoking of pledge of banks. In other words if the market value of pledged shares/securities by Karvy is higher than the loan amount availed from banks, then how the surplus amount realised in the event of invoking of pledge by banks is settled or utilized.

8. The respondent, in response to the aforesaid query, informed that that the query is in the nature of seeking clarification/ opinion and accordingly, the same cannot be construed as seeking “information”, as defined under Section 2(f) of the RTI Act. The appellant, in his appeal, submitted that neither clarification nor opinion has been sought by him.

9. I have perused the query and the response provided thereto. On consideration, I find that that the query is in the nature of seeking clarification/ opinion from the respondent. The query also appears to be a situational query. 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. In this context, I note that the Hon’ble CIC, in the matter of *Mr. Mahendra Kumar Mehta vs. CPIO, SEBI* (Judgment dated April 12, 2021), held that: “9. *This Commission observes that the appellant herein attempts to seek legal opinion/ clarification from the CPIO to his situational queries with regard to 'the circular, rules, regulations, notification etc. regarding trading member for taking stock in pledge, collateral, or security for providing margin to do trade in reference to derivatives segment, charging of interest and GST, precaution to be taken by trading member for protection of constituents individual/HUF etc.'*. Therefore, the CPIO is not supposed to interpret information; or to furnish replies to situational queries; or to furnish clarifications. Hence, such queries seeking legal opinion/ clarification from the CPIO are not covered within the definition of 'information' u/ Section 2(f) of the RTI Act, 2005. Accordingly, this Commission upholds the contention put forth by the CPIO.” In view of these observations, I find that the respondent does not have an obligation to provide such clarification/opinion with respect to situational query, under the RTI Act.

10. **Query number 10-** The appellant, vide query number 10, sought the following information-

10. Please inform the amount realised through the sale of Karvy Demat accounts to IIFL, Trading accounts to Axis Securities and Mutual Fund folios/ business to Prudent Corporate Advisory services.

11. The respondent, in response to the aforesaid query, informed that the requested information is exempt from disclosure under section 8(1)(d) and 8(1)(e) of the RTI Act as the same is available to SEBI in fiduciary capacity and includes commercial confidential information, the disclosure of which could harm the competitive position of the entities. The appellant, in his appeal, *inter alia*, submitted that the ground of rejection does not hold good as the information sought has already been published through various media and the same is available in the public domain.
12. I have perused the query and the response provided thereto. I note that the respondent denied disclosure of the requested information by observing that the same is available to SEBI in fiduciary capacity and includes information in the nature of commercial confidence. I have no reason to disbelieve the respondent's response. 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 in its order dated November 30, 2009, 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*". I find that SEBI, being the regulatory authority for the securities market, gets various references/documents from market participants and the information contained therein are received in 'fiduciary relationship'. Such reference/ documents may also contain information in the nature of commercial confidence, disclosure of which may adversely impact the competitive position of the concerned entities. I, therefore, find that such information which is in the nature of commercial confidence and which contains information received in 'fiduciary relationship' from market participants etc. is exempt from disclosure under Sections 8(1)(d) and 8(1)(e) of the RTI Act. Further, I note that the appellant has not established that the information sought is for larger public interest. Accordingly, I do not find any deficiency in the response.
13. Further, I note that the appellant, in his appeal, *inter alia*, submitted regarding availability of the requested information in the public domain. *In arguendo*, if the requested information is already available in the public domain, as alleged by the appellant, it would mean that the information cannot be said to be 'held' or 'under the control of' the public authority and thus, would cease to be an information accessible under the RTI Act. Accordingly, I do not find any merit in the submission made by the appellant.
14. **Query numbers 15, 16 and 17-** The appellant, vide query numbers 15, 16 and 17, sought the following information-

15. *Please inform important submissions made by the respondents (SEBI, Stock exchanges and Depositories) in SAT in the matter of litigation on client's shares/ securities pledged by Kary with banks. Kindly share the certified copy of submissions.*
16. *Please inform the grounds on which the learned counsel for respondent SEBI sought adjournment of the case in SAT on 20/01/2022, 16/02/2022 and on 25/03/2022 in the matter of client's shares pledged by Kary with Banks.*
17. *If any information sought vide this application under RTI is not available with SEBI, kindly inform the authority or organisation from where the same can be obtained.*

15. In response to the aforesaid queries, the appellant informed that SEBI is not the original holder of the information sought by the appellant in terms of section 2(f) and 2(j) of the RTI Act. Further, the respondent advised the appellant to approach the Tribunal for the same as per the extant procedures. The appellant, in his appeal, *inter alia*, submitted that SEBI is the original holder of the requested information. The appellant also submitted that only question numbers 15 and 16 are related to litigation in SAT. Hence, it is not possible to approach Tribunal for the information which have not been provided by SEBI.
16. I have perused query numbers 15 and 16 and the response provided thereto. I note that the appellant has sought information pertaining to a particular proceeding before the Hon'ble Securities Appellate Tribunal (SAT). The appellant also sought the submissions made by SEBI before the Hon'ble SAT. I agree with the respondent that SEBI is not the primary holder of the information. Hence, the respondent does not have an obligation/legal liability to provide the information under the RTI Act. In this context, I note that the Hon'ble CIC in *Shri Amiya Kanti Patnaik Vs. Central Excise Department* (Order dated August 31, 2009), held that: *"14. In my view, the holder of the information in cases where a set of information is held by more than one public authority and, only one of which holds it in original, only the public authority which holds the original of the information / document under a statute, rule, notification or instruction, etc., should be construed to hold that information within the meaning of Section 2(j) of the RTI Act. It is only this public authority which is in a position to decide whether a given information was liable to be disclosed because it is this public authority which is in know of the condition of the submission and retention of the information, the statutory or the other implications of such retention, the status of its confidentiality and the conditions in which either the whole, or a part of the information could be disclosed and whether - if that is the case - such an information is already in the public domain. These determinations could never be made by a public authority which came to receive this information in the form of photocopies - or even in original for a temporary period - for a specific purpose, which in this case is for audit. According to me, the latter public authority is a secondary holder of the information and received this information only incidentally and not directly as the other set of public authorities, who received the information authoritatively under statutes, rules and regulations. The manner in which a set of information / documents / records come into the possession of a*

public authority is a key determinant of who is the primary holder of such information under Section 2(j). 15. I, therefore, hold that the respondents as the secondary or the incidental holders of the requested information could not decide whether such information is disclosable within the provisions of the RTI Act. This decision can be made only by the primary or the principal holder of this information, which in the present case, is the Registrar of Companies and the Department of Income Tax.” In view of these observations, I do not find any deficiency in the response.

17. I have perused query number 17 and the response provided thereto. I am of the opinion that the query of the appellant is in the nature of seeking clarification/opinion from the respondent and 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. In this context, I note that the Hon’ble CIC, in the matter of *Azad Singh vs. CPIO, Oriental Insurance Company Limited* (order dated March 23, 2021), 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.” I find that the said query cannot be construed as seeking ‘information’ as defined under section 2 (f) of the RTI Act. Consequently, the respondent does not have an obligation to provide such clarification or opinion under the RTI Act.
18. In view of the above observations, I find that there is no need to interfere with the decision of the respondent. The Appeal is accordingly dismissed.

Place: Mumbai
Date: June 29, 2022

A SUNIL KUMAR
APPELLATE AUTHORITY UNDER THE RTI ACT
SECURITIES AND EXCHANGE BOARD OF INDIA