

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

Appeal No. 5142 of 2022

Suhail Kothari	:	Appellant
	Vs	
CPIO, SEBI, Mumbai	:	Respondent

ORDER

1. The appellant had filed an application dated May 21, 2022 (received by the respondent through RTI MIS Portal) under the Right to Information Act, 2005 (“**RTI Act**”). The respondent, by a letter dated June 17, 2022 responded to the application filed by the appellant. The appellant filed an appeal dated June 17, 2022, against the said response dated June 17, 2022. 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 the information provided was incomplete, misleading or false. On perusal of the appeal, it appears that the appellant is not satisfied with the reply provided by the respondent with respect to query numbers 3(b) and 3(c) of the application. In view of the submissions made by the appellant, I am only dealing with the said queries and the response provided thereto in this order.
3. **Query number 3(b)-** The appellant, in his application dated May 21, 2022, referred to the SEBI Circular No. SEBI/HO/MRD2/DCAP/CIR/P/2020/127 dated July 20, 2020 related to Framework to Enable Verification of Upfront Collection of Margins from Clients in Cash and Derivatives segments. The appellant, vide query number 3(b), sought the following information:

3 b) Date of last monthly development reports on implementation of the circular that have been received from NSE and NSE Clearing Limited

4. The respondent, in response to the aforesaid query, informed that the Monthly Development Reports have been received by SEBI. The respondent also informed that the Exchange and the Clearing Corporation implemented the circular on December 01, 2020. The appellant, in his appeal, *inter alia*,

submitted that the response does not mention the date of last received monthly development report from Exchange and NSE Clearing Ltd.

5. I have perused the query and the response provided thereto. I note that the respondent has specifically sought information regarding the date of last monthly development reports received from NSE and NSE Clearing Limited with respect to implementation of the Circular dated July 20, 2020. The respondent, in his response, provided the date of implementation of the Circular dated July 20, 2020 by the Exchange and the Clearing Corporation. On consideration, I find that the query has not been adequately addressed and the same warrants reconsideration by the respondent.
6. **Query Number 3(c)-** The appellant, vide query number 3(c), sought the following information: .

3 c) I request a copy of the last three Monthly Development report on status of implementation of the provisions submitted to SEBI by the NSE and NSE Clearing Limited.

7. The respondent, in response to the aforesaid query, 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. The respondent also informed that the requested information is exempt from disclosure in terms of 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 confidential information to other entities, the disclosure of which could harm their competitive position. The appellant, in his appeal, *inter alia*, queried how the monthly development reports can be termed as confidential information of other entities. The appellant also submitted that the information sought by him cannot be termed as information pertaining to internal functioning of SEBI.
8. I have perused the query and the response provided thereto. I have no reason to disbelieve the respondent's response that the same is available to SEBI in fiduciary capacity and includes information in the nature of commercial confidence. In this context, 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 (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 other 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.

9. In view of the above observations, I remit the matter to the respondent for *de novo* consideration of the query number 3 b) and to send appropriate response to the appellant in terms of RTI Act, within 15 working days from the date of receipt of this order.
10. The Appeal is accordingly disposed of.

Place: Mumbai

Date: July 15, 2022

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