

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

Appeal No. 5073 of 2022

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

ORDER

1. The appellant had filed an application dated February 11, 2022 (received by SEBI on February 23, 2022) under the Right to Information Act, 2005 (“**RTI Act**”). The respondent, by a letter dated March 22, 2022, responded to the application filed by the appellant. The appellant filed an appeal dated May 01, 2022 (received by the Office of Appellate Authority on May 24, 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. 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. In the instant case, the impugned response from the respondent is dated March 22, 2022. The appellant, therefore, should have filed the first appeal on or before expiry of thirty days from the date of receipt of the said response. As noted above, the appellant’s first appeal was received on April 24, 2022. The first appeal has been made after the last date permissible under the RTI Act. The appellant, in his appeal, *inter alia*, submitted that the delay in filing the appeal was due to his health condition. In view of the submission of the appellant, the said delay is condoned. 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.
3. **Ground of appeal-** On perusal of the appeal, it appears that the appellant is not satisfied with the response provided by the respondent. The appellant, in his appeal, submitted that the information provided by the respondent is vague and evasive. The appellant also submitted that the request for information is crystal clear and comprehensive. I note that the application is filed in the matter of

dealings in illiquid stock options at BSE which is ongoing. Accordingly, I am dealing with the said queries and the response provided thereto in the following paragraphs.

4. **Query number a-** The appellant, vide query number a of his application, *inter alia*, sought Investigation Reports relied upon by SEBI for issuing the Show Cause Notices (SCNs).
5. 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. 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.
6. I have perused query numbers a and the response 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 SCNs. 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). In view of the same, I do not find any deficiency in the response.

7. **Query numbers b, c and i-** Vide query number b, the appellant sought order placement records of the Noticees specifically relied upon by SEBI for issuing SCNs. Vide query number c, appellant sought cross-examination including testimonies of Broker, BSE, Counter Party Broker and Counter Parties. The appellant, vide query number i, sought copy of Circulars issued by BSE for prevention of fraud of illiquid options for investors showing amount of penalty payable by investors.
8. The respondent, in response to the aforesaid queries, informed that the information sought is not available with SEBI.
9. I have perused the queries and the response provided by the respondent. I do not find any reason to disbelieve the observation that the requested information is not available with SEBI. In this context, I note that the Hon'ble CIC, in the matter of *Sh. Pattipati Rama Murthy vs. CPIO, SEBI* (Decision dated July 8, 2013), held: "... if it (SEBI) does not have any such information in its possession, the CPIO cannot obviously invent one for the benefit of the Appellant. There is simply no information to be given." In view of these observations, I find that the information sought by the appellant was not available with SEBI and therefore, the respondent cannot be obliged to provide such non-available information.

10. **Query numbers d, g and j-** The appellant, vide query numbers d, g and j, sought the following information-

d. Action taken against SEBI officers in the subject matter whose job was to protect the interests of the Investors.

g. Copy of complaint filed with SEBI by BSE, SEBI Officials, Brokers and Counter parties, resulting in actions against Investors.

j. Number of Adjudicating Officers appointed specifically for the subject matter and when and why.

11. The respondent, in response to the aforesaid queries, informed that the queries are vague and not specific and accordingly, the same cannot be construed as seeking “information”, as defined under Section 2(f) of the RTI Act.
12. I have perused the queries raised by the appellant. I find that the same are vague and not specific. Further, it is difficult to ascertain what exact information has been sought by the appellant. In this context, I note that in the matter of *Sbri S. C. Sharma vs. CPIO, Securities and Exchange Board of India* (Decision dated August 30, 2012), the Hon’ble CIC held: “*Since the Appellant had not clearly stated what exact information he wanted, the CPIO could not have provided any specific information to him. We would like to advise the Appellant that he might like to specify the exact information he wants from the SEBI and prefer a fresh application before the CPIO.*” In view of the same, I do not find any deficiency in the response.
13. **Query numbers e and f-** The appellant, vide query number e, sought information regarding actions taken against BSE in the subject matter. Vide query number f, the appellant sought information regarding actions taken against Brokers in the subject matter.
14. In response to the aforesaid queries, the respondent informed that the information about any enforcement action taken/ penalty imposed by SEBI, is available on the SEBI website, which is in the public domain. The respondent also provided the link for accessing the same.
15. On consideration, I find that answer to such queries can be found out by the appellant by accessing the information available in the public domain. I find that the respondent has adequately addressed the queries by guiding the appellant to access the SEBI website. Accordingly, no further intervention of this forum is warranted at this stage.

16. **Query number h-** Vide query number h, the appellant sought copy of SEBI Circulars issued for the governance of investors for prevention of alleged fraud in the subject matter, showing therein penalties payable.
17. The respondent, in response to the aforesaid query, guided the appellant to access the information with respect to jurisdiction of SEBI, the provisions of the SEBI Act, 1992 (and its amendments thereof), Rules, Regulations and Circulars framed thereunder. The respondent also provided the link/path for accessing the relevant webpage on the SEBI website.
18. I have perused the queries and the response provided thereto. On consideration, I find that the respondent has guided the appellant to access the relevant information which is published on the SEBI website in compliance with section 4(b) of the RTI Act. In my view, the query has been adequately addressed. Accordingly, I do not find any deficiency in the response.
19. 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 20, 2022

ANAND BAIWAR

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