

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

Appeal No. 5371 of 2022

Suchandan Ganguly	:	Appellant
	Vs	
CPIO, SEBI, Mumbai	:	Respondent

The aforesaid appellant had filed an application dated July 03, 2022 (received by the respondent on July 11, 2022) under the Right to Information Act, 2005 (“**RTI Act**”), with respect to the Show Cause Notice issued to investors in the matter of Illiquid Stock at BSE, which is ongoing. The respondent, by a letter dated August 02, 2022, responded to the application filed by the appellant. The appellant filed an appeal dated August 12, 2022 (received by the Office of Appellate Authority on August 18, 2022).

With
Appeal No. 5372 of 2022

Rajesh Sarkar	:	Appellant
	Vs	
CPIO, SEBI, Mumbai	:	Respondent

The aforesaid appellant had filed an application dated July 03, 2022 (received by the respondent on July 11, 2022) under the Right to Information Act, 2005 (“**RTI Act**”), with respect to the Show Cause Notice issued to investors in the matter of Illiquid Stock at BSE, which is ongoing. The respondent, by a letter dated August 02, 2022, responded to the application filed by the appellant. The appellant filed an appeal dated August 13, 2022 (received by the Office of Appellate Authority on August 18, 2022).

ORDER

1. I have perused the above mentioned applications, responses and appeals filed by the appellants. In both the applications, the appellants have sought similar information pertaining to Show Cause Notices issued to investors, in the matter of alleged dealings in Illiquid Stock Options at BSE. I note that Adjudication Proceedings in the matter of alleged dealings in Illiquid Stock Options at BSE, are ongoing. Further, I find that identically worded appeals have been filed by the appellants.

2. **Ground of appeal-** On perusal of the appeals, it appears that the appellants are not satisfied with the response provided by the respondent. The appellants have also stated that they have not received any information that they have requested for. Further, I note that the appellants, in their appeals, while referring to the order passed by the Hon'ble Supreme Court in the matter of *T. Takano vs. SEBI and Anr., inter alia*, requested to disclose the documents requested by them. As the grounds of appeals and issues involved are identical, I am dealing with all the aforesaid appeals, in this order.
3. **Query number 3(a)-** The appellants, vide query numbers 3(a), sought the Investigation Report relied upon by SEBI in the SCNs in the subject matter.
4. 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.
5. I have perused the query 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). Further, all documents relied upon in the quasi- judicial proceedings are provided to the respective noticees along with the Show Cause Notices issued to them. In view of the same, I do not find any deficiency in the response.

6. **Query number 3(b)-** The appellants, vide query number 3(b), sought the minutes of the Whole Time members authorizing the AO to levy penalties in the subject matter.
7. The respondent, in response to the aforesaid query, informed that the query is vague and not specific and accordingly, the same cannot be construed as seeking “information” as defined under section 2(f) of the RTI Act.
8. I have perused the query raised by the appellants. I find that the same is vague and not specific. Further, it is difficult to ascertain what exact information has been sought by the appellant. In view of the same, I do not find any deficiency in the response.

9. **Query numbers 3(c), 3(e) and 3(f)-** The appellants, vide query number 3(c), sought Cross-examination including testimonies of Broker, BSE, Counter Party Broker and Counter Parties in the subject matter. Vide query number 3(e), the appellant sought copy of the Circular issued by BSE for prevention of fraud of Illiquid Stock Options for Investors showing amount of penalty payable by Investors in the subject matter. Vide query number 3(f), the appellant sought the copies of government orders for issuing SCN to investors in the subject matter.
10. In response to the aforesaid queries, the respondent informed that the information sought is not available with SEBI.
11. I have perused the queries and the response provided by the respondent. I do not find any reason to disbelieve the observation of the respondent 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.
12. **Query number 3(d)-** The appellants, vide query number 3(d), sought the copy of Circular issued by SEBI for the governance of Investors for prevention of fraud for the subject matter.
13. The respondent, in response to the aforesaid queries, guided the appellants 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.
14. I have perused the query and the response provided thereto. On consideration, I find that the answer to the queries can be found out by the appellant by accessing the information available on the SEBI website, which is in the public domain. I note that Hon'ble CIC in *Shri K Lall vs. Shri M K Bagri* (CIC/AT/A/2007/00112, order dated April 12, 2007) held that "..... unless an information is exclusively held and controlled by a public authority, that information cannot be said to be an information accessible under the RTI Act. Inferentially it would mean that once a certain information is placed in the public domain accessible to the citizens either freely, or on payment of a pre-determined price, that 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." In view of these

observations, I find that the respondent cannot be obliged to provide response to such requests for information, as made by the appellants through their applications. Notwithstanding the same, I find that the respondent has guided the appellants to access the relevant information which is available on the SEBI website. In my view, the query has been adequately addressed. Accordingly, I do not find any deficiency in the response.

15. Further, the appellants, in their appeals, referred to the matter of *T. Takano vs. SEBI and Anr.* and requested to disclose all the material relevant in the matter. I note that the Hon'ble Supreme Court, in the said matter, had observed that the right of the noticee to disclosure must be balanced with a need to preserve any other third-party rights that may be affected. On perusal of the application, I note that the appellants have clearly sought Investigation Report relied upon by various Adjudicating Officers for issuing Show Cause Notices to investors. Further, it is not clear from the applications whether the appellants are parties to the proceedings with regard to which information is being sought. I note that the Hon'ble Supreme Court, in the judgement dated February 18, 2022 passed in the matter of *T. Takano vs. SEBI and Anr.*, specifically held as under-

"51. The conclusions are summarised below:

(i) The appellant as a right to disclosure of the material relevant the proceedings initiated against him. A deviation from the general rule of disclosure of relevant information was made in Natwar Singh (supra) based on the stage of the proceedings. It is sufficient to disclose the materials relied on if it is for the purpose of issuing a show cause notice for deciding whether to initiate an inquiry. However, all information that is relevant to the proceedings must be disclosed in adjudication proceedings;"

16. The Hon'ble Supreme Court, in the above mentioned paragraph, has emphasized that all information that is relevant to the proceedings must be disclosed in adjudication proceedings. In my view the relevant forum where the proceedings are pending, has to examine what part of a document may be disclosed to a noticee in that particular case. Thus, in the face of specific reasons given earlier in this order, as to why the CPIO was right in stating that the information sought was not available or could not be provided, the appellants have not explained as to how the cited judgement of the Hon'ble Apex Court supports their grounds of appeal.

17. 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: September 19, 2022

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